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# **Economic Development, Trade & Banking Committee**

**Thursday, March 23, 2006  
2:30 pm – 5:30 pm  
306 HOB**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

### Economic Development, Trade & Banking Committee

**Start Date and Time:** Thursday, March 23, 2006 02:30 pm

**End Date and Time:** Thursday, March 23, 2006 05:30 pm

**Location:** 306 HOB

**Duration:** 3.00 hrs

#### Consideration of the following bill(s):

HB 65 CS Foreclosure Proceedings by Porth

HB 1141 Conveyances of Land by Stargel

HB 1211 Notification Regarding the State Minimum Wage by Fields

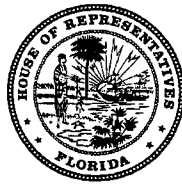
HB 1237 CS Advanced Science and Technology Research by Mealor

HB 1595 State Incentives in Enterprise Zones by Jennings

HB 7061 Review under the Open Government Sunset Review Act regarding Deferred Presentment Providers by Governmental Operations Committee

According to rule 7.22(c), non-appointed members must file amendments by 5 p.m., Wednesday, March 22, 2006. The Chairman requests that committee member amendments also be filed by 5 p.m., Wednesday, March 22, 2006.

**NOTICE FINALIZED on 03/21/2006 13:56 by GOLDING.SARA**



# **The Florida House of Representatives**

## **Commerce Council**

### **Economic Development, Trade & Banking Committee**

**Allan G. Bense**  
Speaker

**Gus Michael Bilirakis**  
Chair

## **Agenda March 23, 2006**

- I. Roll Call**
- II. Welcome and Opening Remarks**
- III. Consideration of the following bills :**
  - HB 65 CS – Foreclosure Proceedings  
by Representative Porth
  - HB 1141 – Conveyances of Land  
by: Representative Stargel
  - HB 1211 – Notification Regarding the State Minimum Wage  
by: Representative Fields
  - HB 1237 CS – Advanced Science and Technology Research  
by: Representative Mealor
  - HB 1595 – State Incentives in Enterprise Zones  
by: Representative Jennings
  - HB 7061 – Review under the Open Government Sunset Review Act  
regarding Deferred Presentment Providers  
by: Representative Governmental Operations Committee &  
Rivera
- IV. Adjourn**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 65 CS      Residential Foreclosure Proceedings  
**SPONSOR(S):** Porth; Kottkamp  
**TIED BILLS:** None      **IDEN./SIM. BILLS:** CS/SB 166

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	7 Y, 0 N, w/CS	Bond	Bond
2) Economic Development, Trade & Banking Committee		Olmedillo <i>JA</i>	Carlson <i>MWC</i>
3) Justice Appropriations Committee			
4) Justice Council			
5)			

### SUMMARY ANALYSIS

Foreclosure is the legal process for enforcing a lien or mortgage encumbering real property. The foreclosure process results in a forced sale of the property. In some foreclosure cases, the sale price exceeds the amount owed to pay off the lien or mortgage. In such cases, the former property owner may be entitled to proceeds from the sale. Current law does not provide a procedure for distribution of that surplus to the former property owner, requiring the former owner to file court papers to obtain a court order directing the clerk to pay the surplus to the former owner.

This bill creates a legal presumption that the former owner of the property is entitled to the surplus, requires the clerk of court to notify other parties in the foreclosure action of the surplus, gives those parties an opportunity to object to the distribution of the surplus to the owner, and provides that if no person objects within 30 days the surplus will be paid to the former owner without court order. This bill also requires that certain disclosures be made before a court will honor a transfer or assignment of the surplus. This bill also provides that it is deceptive and unfair trade practice to victimize a person whose home is in foreclosure, creating a civil cause of action.

This bill creates service fees payable to the clerk of court related to foreclosure surplus, and increases costs to clerks related to the activities for which the fees are charged. This bill does not appear to have a fiscal impact on state or local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government -- This bill complicates foreclosure actions, and creates a new cause of action.

Ensure Lower Taxes -- This bill creates new fees.

Promote Personal Responsibility -- This bill increases personal responsibility for injurious behavior by creating a cause of action for deceptive and unfair trade practices.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

Foreclosure is the legal process for enforcement of a security interest in real property. Subject to the owner's right to redemption<sup>1</sup>, property subject to foreclosure is sold and the proceeds of the sale are applied against the debt. In most foreclosures, the debt exceeds the net proceeds of the sale.<sup>2</sup> However, due to recent economic forces that have led to substantial inflation in real property values, a growing number of properties are being sold at foreclosure for more than the debt owed on the property. The proceeds of a sale in excess of the debt owed is referred to as the surplus from the sale. In general, the property owner is entitled to the surplus.

A property owner facing foreclosure can seek help from numerous sources. The property owner can negotiate with the foreclosing lender. A different lender may be willing to refinance the property, or offer a second mortgage. The property owner can seek bankruptcy protection. The property owner can sell the property prior to the foreclosure sale. The property owner can borrow from friends and family. Most foreclosure cases are resolved by agreement or redemption of the property.

It has been reported that, with the growing number of foreclosures that may result in a surplus, there is a growing number of entrepreneurs who are offering services to property owners subject to foreclosure. Some of these entrepreneurs are receiving significant profits while the property owners they contract with receive little of their equity in the property. Some of the common means are:

- A lawyer, or a person claiming to be a lawyer, will offer to file the legal papers required to obtain the court order required for the clerk to distribute the surplus to the now (or soon to be) former property owner. The fee arrangement may be a contingency fee. The property owner does not realize that the paperwork is basic enough that most lay persons could easily complete it.<sup>3</sup>
- The entrepreneur offers the property owner a small sum of cash in exchange for an assignment of the surplus.

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<sup>1</sup> Redemption is the right of any property owner to pay the debt at any time prior to the sale, and thereby stop the sale and keep the property. See generally, s. 45.0315, F.S.

<sup>2</sup> Where the debt exceeds the sale proceeds, the lender can usually sue for the difference, known as a deficiency. See generally s. 702.06, F.S.

<sup>3</sup> In a related scheme, the Florida Bar has suspended the license of an attorney who was allegedly filing the paperwork necessary to obtain the surplus funds, but without receiving the owner's authority. The lawyer would deduct a 40% fee from the proceeds, and prepare a check payable to the former owner for the remainder. In some cases, the partners would intercept and cash the owner's check. Daily Business Review, *South Florida lawyer accused in mortgage scam is suspended*, Vol. 46, No. 45 (Feb. 11, 2005).

- The entrepreneur offers the property owner a small sum of cash for a quitclaim deed to the property, thereby obtaining the legal right to the surplus.

The procedure for judicial foreclosure sales is set forth in s. 45.031, F.S. The section does not specify how the clerk is to handle a surplus, thus requiring a court order for distribution of the surplus. The section also does not restrict any sale or transfer of the real property, or the right to the surplus, prior to foreclosure.

## **Effect of Bill**

### Disbursement of Surplus Funds

This bill creates s. 45.032, to provide for disbursement of surplus funds after a judicial foreclosure sale. The section creates a legal presumption that the owner of the property that was foreclosed, as of the date of the filing of the lis pendens, is entitled to the surplus funds unless some other person proves entitlement to the funds. The bill also provides procedures for the clerks of court to follow in disbursing surplus funds.

The bill defines the following terms:

- "Owner of record" means the person or persons who appear to be the owner of the property on the date of the filing of the lis pendens. The clerk need not perform a title search and examination, but may rely on the plaintiff's allegation of ownership in the complaint when determining the owner of record.
- "Surplus funds" means the funds remaining after payment of all disbursements required by the final judgment of foreclosure and shown on the certificate of disbursements.

If the surplus funds are less than \$200, the clerk of court may deduct a \$5 service charge, and is to pay the balance of the surplus funds to the owner of record. The clerk may mail the check to the last known address of the owner of record.

If the surplus funds are \$200 or more, the clerk is required to send a Notice of Surplus Funds to all persons who appear from the pleadings to be a person who may be interested in the surplus funds; except that the clerk is not required to send a notice to the plaintiff, to a defendant who was a junior lienholder and who was paid all of the monies required by the final judgment, nor to an unknown defendant. The form of the "Notice of Surplus Funds" for use by the clerk of court to notify persons that may have a claim or interest in the surplus funds is:

(Caption of Action)

### **NOTICE OF SURPLUS FUNDS**

The undersigned clerk of the court certifies that he or she disbursed the proceeds received from the sale of the property as provided in the order or final judgment to the persons named in the certificate of disbursements, and that surplus funds of \$\_\_\_\_\_ remain and are subject to disbursement by the court.

It appears that \_\_\_\_\_, as owner(s) of the property at the time that the foreclosure was filed, (is/are) entitled to payment of the surplus funds. The clerk of court will pay the surplus funds to the owner(s) unless an objection to payment of the surplus funds is filed with the court on or before \_\_\_\_\_. If an objection is timely filed, a hearing will be set in order for the court to determine who is entitled to receive the surplus funds.

IF YOU ARE AN INDIVIDUAL AND ARE THE OWNER OF THE PROPERTY, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED.

WITNESS my hand and the seal of the court on \_\_\_\_\_, (year) .  
(Clerk)

By (Deputy Clerk)

If the clerk is unsure as to whom the owner of record is, the clerk may write "unknown" on the form, and send the notice of surplus funds with a notice of hearing. The clerk may only receive one service charge for the mailing.

The clerk is entitled to a service charge of \$5 for each notice of surplus funds that is mailed.

If no objection to payment of the surplus funds to the owner of record is filed within 30 days of the mailing of the notice of surplus funds, the clerk must pay the surplus funds to the owner of record. If the location of the owner of record is unknown, the clerk may expend up to \$250 of the surplus funds to conduct or contract for a search for the owner of record. If the search is unsuccessful, and more than 90 days has elapsed, the clerk is to treat the funds as unclaimed property, to be deposited with the Chief Financial Officer pursuant to ch. 717, F.S.

If an objection is filed or if the clerk is unable to determine the owner of record, the court must also set a hearing to determine the disposition of the surplus funds. The clerk must prepare a notice of the hearing and furnish the notice of hearing by certified mail to all persons who received a notice of surplus funds and to any other person who has requested notice of the hearing on surplus funds. The clerk is entitled to an additional service charge of \$5 per notice of hearing, which may be drawn from the surplus funds.

At a hearing on disposition of surplus funds, the owner of record is presumed to be the person entitled to payment of the surplus funds. Any person other than the owner of record who claims the surplus funds has the burden of proving that he or she is entitled to some or all of the surplus funds. The court must consider the factors in s. 45.033, created by this bill, when hearing a claim that a person other than the owner of record is entitled to the surplus funds.

The clerk of court may also collect a fee of \$25 from any surplus funds remaining in the court registry following a foreclosure sale. The clerk must use the proceeds of such fee solely for purposes of educating the public as to the rights of homeowners regarding foreclosure proceedings.

#### Transfer or Assignment of Right to Surplus Funds

This bill creates s. 45.033, to provide criteria for determining whether a sale or assignment of the right to surplus proceeds in a property subject to foreclosure is a valid sale or assignment. The bill creates a rebuttable presumption that the owner of real property as of the date of the filing of a lis pendens is entitled to surplus funds available in a foreclosure of that real property. Another person may rebut that presumption only by proving that a transfer or assignment of the right to collect the surplus funds, or any portion or percentage of the surplus funds:

- Includes a financial disclosure that specifies the assessed value of the property, a statement that the assessed value may be lower than the actual value of the property, the approximate amount of any debt encumbering the property, the approximate amount of any equity in the property.



- Includes a statement that the owner does not need an attorney or other representative to recover surplus funds in a foreclosure.

Specifies all forms of consideration paid for the rights to the property or the assignment of the rights to any surplus funds.

A transfer or assignment that does not follow these requirements may nevertheless be allowed by the court if the court finds that the instrument was procured in good faith and with no intent to defraud the former owner.

A person who has executed a transfer or assignment that does not conform to the requirements of this section has the right to petition the court presiding over the foreclosure proceeding to set aside the nonconforming transfer or assignment. If the transfer or assignment is set aside, the owner of record will be entitled to the surplus funds; but the other party may, in a separate proceeding, seek rescission of contract and appropriate damages therein. The prevailing party in any proceeding to set aside a transfer, or rescission of the assignment, is entitled to recover all fees and costs incurred in connection with such proceeding, including a reasonable attorney's fee.

The provisions regarding the requirements of an assignment or transfer of the right to collect surplus funds do not apply to a deed, a mortgage, or a deed in lieu of foreclosure, unless a person other than the owner of record is claiming that a deed or mortgage entitles the person to surplus proceeds. Nothing in this section shall affect the title or marketability of the real property that is the subject of the deed or other instrument. The provisions regarding the requirements of an assignment or transfer of the right to collect surplus funds do not affect the validity of a lien evidenced by a mortgage.

#### Deceptive and Unfair Trade Practices Related to Surplus Funds

This bill creates s. 501.2078, within the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).<sup>4</sup> The FDUTPA creates a number of civil causes of action by which a state attorney, or the Attorney General, may seek injunctive relief, an injunction, and a civil penalty against a person engaging in a deceptive or unfair trade practice. The FDUTPA also creates a civil cause of action by which a person harmed by a deceptive or unfair trade practice may seek a civil judgment against the a person engaging in a deceptive and unfair trade practice.<sup>5</sup>

This bill provides that deceptive and unfair trade practices occurring in a foreclosure proceeding of a homeowner may give rise to a civil cause of action under FDUPTA. The bill also defines "homeowner". The foreclosure must be a "residential foreclosure proceeding", defined as "any action in a circuit court of this state in which a party seeks to foreclose on a mortgage encumbering the mortgagor's primary dwelling."

This bill provides that any person, other than a financial institution as defined by s. 655.005, F.S.,<sup>6</sup> who willfully uses, or has willfully used, a method, act, or practice in violation of FDUPTA, which method, act, or practice victimizes or attempts to victimize homeowners during the course of a residential foreclosure proceeding, and in committing such violation knew or should have known that such conduct was unfair or deceptive, is liable for a civil penalty of not more than \$15,000 for each such violation.

Restitution or reimbursement to a homeowner is to be paid first, before payment of any civil penalty. Civil penalties collected are deposited into the Legal Affairs Revolving Trust Fund of the Department of

<sup>4</sup> See Part II of ch. 501, F.S.

<sup>5</sup> Section 501.211, F.S.

<sup>6</sup> Section 655.005(1)(h), F.S., defines "financial institution" as "a state or federal association, bank, savings bank, trust company, international bank agency, international branch, representative office or international administrative office, or credit union."

Legal Affairs and allocated solely to the Department of Legal Affairs for "the purpose of preparing and distributing consumer education materials, programs, and seminars to benefit homeowners in residential foreclosure proceedings or to further enforcement efforts."

This bill provides that the "act of encumbering the dwelling subject to a residential foreclosure proceeding with a substitute or additional lien" is not grounds for suit under this section of FDUPTA.

#### Legal Notice Concerning Foreclosure Proceedings.

The prevailing party in any civil action may be entitled to reimbursement of court costs from a non-prevailing party. This bill limits an award of costs for a legal advertisement, publication, or notice relating to a foreclosure proceeding to the actual costs charged by the newspaper for the advertisement, publication or notice.

#### C. SECTION DIRECTORY:

Section 1 amends s. 45.031, F.S., to refer to the newly created sections on surplus funds.

Section 2 creates s. 45.032, F.S., to provide for distribution of surplus funds.

Section 3 creates s. 45.033, F.S., to provide criteria for determination of a valid transfer or assignment of the right to collect surplus funds.

Section 4 creates s. 501.2078, F.S., to provide that victimization of a homeowner involved in a foreclosure action may be a violation of the Florida Deceptive and Unfair Trade Practices Act.

Section 5 amends s. 702.035, F.S., to limit taxable costs chargeable in a foreclosure action.

Section 6 provides an effective date of July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The bill allows the clerk of court to collect a \$25 fee in any foreclosure case in which there are surplus funds. The bill further provides that a clerk of court is entitled to \$5 for each notice to a party that is sent by certified mail. Furthermore, the bill authorizes the clerk to expend up to \$250 of the surplus funds to conduct or contract for a search for the owner of record. It is unknown how many foreclosure cases have surplus funds.

##### 2. Expenditures:

This bill authorizes clerks of court to create an education program regarding foreclosures. The cost of such program is unknown.

This bill requires clerks of court to prepare and send notices regarding surplus funds by certified mail. Current postage rates for a one ounce letter sent by certified mail, return receipt requested, is \$4.64.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill deducts certain costs from surplus funds, which costs are related to the proper payment of the surplus funds. A former property owner will have deducted from his or her surplus proceeds a \$25 fee for educational activities, plus \$5 or \$10 for each party to the lawsuit that is notified regarding the surplus.

D. FISCAL COMMENTS:

Given recent postal service increases, the \$5 notice fee to the clerk may be inadequate.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The language of the bill in regards to criminalizing the practice of victimizing or attempting to victimize a homeowner is unconstitutionally vague.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill creates two distinct definitions for the owner of real property involved in the foreclosure proceeding. First, the bill provides a definition for "owner of record" for purposes of Section 45.032; second, the bill creates a separate definition for "homeowner" for purposes of Section 501.2078. The bill should create one consistent definition throughout.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On January 11, 2006, the Civil Justice Committee adopted one "remove everything after the enactment clause" amendment. The amendment:

- Removed the notification that was to be attached to every summons served in a foreclosure action.
- Removed the prohibition on contacting persons subject to foreclosure.
- Created a presumption that the owner of record as of the date of the lis pendens is the person entitled to payment of the surplus, unless another person proves his or her right to claim the surplus.
- Created fees for the clerk of court.
- Provided that the clerk can distribute the surplus to the former owner if no other person objects.
- Removed limitations on property transfers that would likely have impacted all real estate closings.

The bill was then reported favorably with a committee substitute.

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CHAMBER ACTION

The Civil Justice Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to foreclosure proceedings; amending s. 45.031, F.S.; revising provisions for distribution of proceeds from a judicial sale; creating s. 45.032, F.S.; providing for disbursement of surplus funds after a judicial sale; providing definitions; specifying a form; establishing a presumption of entitlement to surplus funds in certain filings; providing for disbursement of surplus funds by the clerk of court; requiring notice to potential claimants; providing notice requirements; providing for service charges and fees for the clerk; authorizing the clerk to expend certain surplus funds for certain purposes; providing for treatment of surplus funds as unclaimed property under certain circumstances; requiring a disposition hearing under certain circumstances; specifying burden of proof; requiring the clerk to use certain fees for certain purposes; creating s. 45.033, F.S.; providing for a sale or assignment of rights to surplus funds in a foreclosure proceeding; creating a

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rebuttable presumption of entitlement to certain funds; providing requirements for transfers or assignments in rebuttal; providing for court action to set aside or rescind certain transfers or assignments under certain circumstances; providing for recovery of attorneys' fees; providing for nonapplication to certain instruments; specifying absence of effect on title or marketability of certain property or validity of certain liens; creating s. 501.2078, F.S.; providing definitions; providing a civil penalty for knowingly using unfair or deceptive homeowner victimization methods, acts, or practices in residential foreclosure proceedings; specifying higher priority of an order of restitution or reimbursement over imposition of a civil penalty; providing for deposit of civil penalties into the Legal Affairs Revolving Trust Fund of the Department of Legal Affairs; allocating such funds for certain purposes; specifying nonapplication to certain encumbrances; amending s. 702.035, F.S.; limiting costs chargeable in a foreclosure proceeding; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (7) of section 45.031, Florida Statutes, is amended to read:

45.031 Judicial sales procedure.--In any sale of real or personal property under an order or judgment, the following

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procedure may be followed as an alternative to any other sale procedure if so ordered by the court:

(7) DISBURSEMENTS OF PROCEEDS.--

(a) On filing a certificate of title, the clerk shall disburse the proceeds of the sale in accordance with the order or final judgment and shall file a report of such disbursements and serve a copy of it on each party not in default, and on the Department of Revenue if the department was named as a defendant in the action or if the Agency for Workforce Innovation or the former Department of Labor and Employment Security was named as a defendant while the Department of Revenue was providing unemployment tax collection services under contract with the Agency for Workforce Innovation through an interagency agreement pursuant to s. 443.1316.

(b) The certificate of disbursements shall be, in substantially the following form:

(Caption of Action)

CERTIFICATE OF DISBURSEMENTS

The undersigned clerk of the court certifies that he or she disbursed the proceeds received from the sale of the property as provided in the order or final judgment to the persons and in the amounts as follows:

Name	Amount
Total	

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WITNESS my hand and the seal of the court on \_\_\_\_\_, (year) .  
(Clerk)  
By (Deputy Clerk)

(c) If no objections to the report are served within 10 days after it is filed, the disbursements by the clerk shall stand approved as reported. If timely objections to the report are served, they shall be heard by the court. Service of objections to the report does not affect or cloud the title of the purchaser of the property in any manner.

(d) If there are funds remaining after payment of all disbursements required by the final judgment of foreclosure and shown on the certificate of disbursements, the provisions of ss. 45.032 and 45.033 apply.

Section 2. Section 45.032, Florida Statutes, is created to read:

45.032 Disbursement of surplus funds after judicial sale.--

(1) For purposes of this section and s. 45.033, the term:

(a) "Notice of surplus funds" means a document in substantially the following form:

(Caption of Action)

NOTICE OF SURPLUS FUNDS

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The undersigned clerk of the court certifies that he or she  
disbursed the proceeds received from the sale of the property as  
provided in the order or final judgment to the persons named in  
the certificate of disbursements, and that surplus funds of  
\$ \_\_\_\_\_ remain and are subject to disbursement by the  
court.

It appears that \_\_\_\_\_, as owner(s) of the property  
at the time that the foreclosure was filed, (is/are) entitled to  
payment of the surplus funds. The clerk of court will pay the  
surplus funds to the owner(s) unless an objection to payment of  
the surplus funds is filed with the court on or before  
\_\_\_\_\_. If an objection is timely filed, a  
hearing will be set in order for the court to determine who is  
entitled to receive the surplus funds.

IF YOU ARE AN INDIVIDUAL AND ARE THE OWNER OF THE PROPERTY,  
YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE  
A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO  
ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY  
MONEY TO WHICH YOU ARE ENTITLED.

WITNESS my hand and the seal of the court on \_\_\_\_\_, (year) .

\_\_\_\_\_  
(Clerk)

By \_\_\_\_\_ (Deputy Clerk)

(b) "Owner of record" means the person or persons who  
appear to be the owner of the property on the date of the filing  
of the lis pendens. The clerk need not perform a title search



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and examination but may rely on the plaintiff's allegation of ownership in the complaint when determining the owner of record.

(c) "Surplus funds" means the funds remaining after payment of all disbursements required by the final judgment of foreclosure and shown on the certificate of disbursements.

(2) There is established a legal presumption that the owner of record on the date of the filing of a lis pendens is the person entitled to surplus funds. The surplus funds shall be paid to the owner of record on the date of the filing of the lis pendens unless a court rules otherwise.

(3)(a) If the surplus funds are less than \$200, the clerk, after deducting a \$5 service charge, shall pay the surplus funds to the owner of record. The payment instrument may be furnished by regular mail to the last known address of the owner of record.

(b) If the surplus funds are \$200 or more, the following provisions apply:

1. The clerk shall furnish a notice of surplus funds by certified mail to the following persons:

a. The owner of record.

b. All defendants in the action listed on the final judgment of foreclosure, except that:

(I) A defendant whose claim was paid in full as shown on the certificate of disbursements need not be furnished a notice of surplus funds.

(II) Any defendant named by position and not by actual name need not be furnished a notice of surplus funds. Examples

160 of such defendants include, but are not limited to, defendants  
161 designated as "unknown tenant" or "unknown heir."

162 c. If a suggestion of bankruptcy was filed in the action,  
163 the bankruptcy trustee.

164 d. Any other person who appears from the record to be a  
165 person who may be entitled to the surplus funds. The plaintiff  
166 need not be given a notice of surplus funds.

167 2. If the clerk is unsure as to who the owner of record  
168 is, the clerk may write "unknown" on the form and send the  
169 notice of surplus funds with a notice of hearing. The clerk may  
170 only receive one service charge for the mailing.

171 (4) The clerk shall be entitled to a service charge of \$5  
172 for each notice of surplus funds. The clerk may draw the service  
173 charge from the surplus funds upon mailing.

174 (5) Unless an objection is filed within 30 days after the  
175 mailing of the notice of surplus funds, the clerk shall pay the  
176 surplus funds to the owner of record. If the location of the  
177 owner of record is unknown, the clerk may expend up to \$250 of  
178 the surplus funds to conduct or contract for a search for the  
179 owner of record. If the search is unsuccessful and more than 90  
180 days have elapsed, the clerk shall treat the funds as unclaimed  
181 property, to be deposited with the Chief Financial Officer  
182 pursuant to chapter 717.

183 (6) If an objection is filed or if the clerk is unable to  
184 determine the owner of record, the court shall set a hearing to  
185 determine the disposition of the surplus funds. The clerk shall  
186 prepare a notice of the hearing and shall furnish the notice by  
187 certified mail to all persons who received a notice of surplus

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188 funds and to any other person who has requested notice of the  
189 hearing on surplus funds. The clerk shall be entitled to an  
190 additional service charge of \$5 per notice of hearing, which may  
191 be drawn from the surplus funds.

192 (7) At the hearing, any person other than the owner of  
193 record has the burden of proving that he or she is entitled to  
194 some or all of the surplus funds. The court shall consider the  
195 factors in s. 45.033 when hearing a claim that a person other  
196 than the owner of record is entitled to the surplus funds.

197 (8) The clerk of court may additionally collect a fee of  
198 \$25 from any surplus funds remaining in the court registry  
199 following a foreclosure sale. The clerk shall use the proceeds  
200 of such fee solely for purposes of educating the public as to  
201 the rights of homeowners regarding foreclosure proceedings.

202 Section 3. Section 45.033, Florida Statutes, is created to  
203 read:

204 45.033 Sale or assignment of rights to surplus funds in a  
205 property subject to foreclosure.--

206 (1) There is created a rebuttable presumption that the  
207 owner of real property as of the date of the filing of a lis  
208 pendens is entitled to surplus funds available in a foreclosure  
209 of that real property.

210 (2) The presumption may be rebutted only by proving that a  
211 transfer or assignment of the right to collect the surplus funds  
212 or any portion or percentage of the surplus funds has been  
213 executed as required by this section.

214 (3) For a transfer or assignment to qualify as a transfer  
215 or assignment entitling the transferee or assignee to the

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216 surplus funds, or any portion or percentage of the surplus  
217 funds, the instrument must:

218 (a) Include a financial disclosure that specifies the  
219 assessed value of the property, a statement that the assessed  
220 value may be lower than the actual value of the property, the  
221 approximate amount of any debt encumbering the property, and the  
222 approximate amount of any equity in the property.

223 (b) Include a statement that the owner does not need an  
224 attorney or other representative to recover surplus funds in a  
225 foreclosure.

226 (c) Specify all forms of consideration paid for the rights  
227 to the property or the assignment of the rights to any surplus  
228 funds.

229 (4) A transfer or assignment that does not qualify under  
230 subsection (3) may nevertheless qualify if the court finds that  
231 the instrument was procured in good faith and with no intent to  
232 defraud the transferee or assignee.

233 (5) A party who has executed a transfer or assignment that  
234 does not conform to the requirements of this section may  
235 petition the court presiding over the foreclosure proceeding to  
236 set aside the nonconforming transfer or assignment. If the  
237 transfer or assignment is set aside, the owner of record shall  
238 be entitled to the surplus funds, but the other party, in a  
239 separate proceeding, may seek rescission of contract and  
240 appropriate damages in such proceeding. The prevailing party in  
241 any proceeding under this subsection is entitled to recover all  
242 fees and costs incurred in connection with such proceeding,  
243 including a reasonable attorney's fee.

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CS

(6) This section does not apply to a deed, mortgage, or deed in lieu of foreclosure unless a person other than the owner of record is claiming that a deed or mortgage entitles the person to surplus funds. Nothing in this section affects the title or marketability of the real property that is the subject of the deed or other instrument. Nothing in this section affects the validity of a lien evidenced by a mortgage.

Section 4. Section 501.2078, Florida Statutes, is created to read:

501.2078 Violations involving individual homeowners during the course of residential foreclosure proceedings; civil penalties.--

(1) As used in this section:

(a) "Homeowner" means any individual who is the owner of the property subject to a residential foreclosure proceeding.

(b) "Residential foreclosure proceeding" means any action in a circuit court of this state in which a party seeks to foreclose on a mortgage encumbering the mortgagor's primary dwelling.

(2) Any person, other than a financial institution as defined in s. 655.005, who willfully uses, or has willfully used, a method, act, or practice in violation of this part, which method, act, or practice victimizes or attempts to victimize homeowners during the course of a residential foreclosure proceeding, and in committing such violation knew or should have known that such conduct was unfair or deceptive, is liable for a civil penalty of not more than \$15,000 for each such violation.

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272       (3) Any order of restitution or reimbursement based on a  
273 violation of this part committed against a homeowner in a  
274 residential foreclosure proceeding has priority over the  
275 imposition of any civil penalty for such violation pursuant to  
276 this section.

277       (4) Civil penalties collected pursuant to this section  
278 shall be deposited into the Legal Affairs Revolving Trust Fund  
279 of the Department of Legal Affairs and allocated solely to the  
280 Department of Legal Affairs for the purpose of preparing and  
281 distributing consumer education materials, programs, and  
282 seminars to benefit homeowners in residential foreclosure  
283 proceedings or to further enforcement efforts.

284       (5) This section does not apply to the act of encumbering  
285 the dwelling subject to a residential foreclosure proceeding  
286 with a substitute or additional lien.

287       Section 5. Section 702.035, Florida Statutes, is amended  
288 to read:

289       702.035 Legal notice concerning foreclosure  
290 proceedings.--Whenever a legal advertisement, publication, or  
291 notice relating to a foreclosure proceeding is required to be  
292 placed in a newspaper, it is the responsibility of the  
293 petitioner or petitioner's attorney to place such advertisement,  
294 publication, or notice. The advertisement, publication, or  
295 notice shall be placed directly by the attorney for the  
296 petitioner, by the petitioner if acting pro se, or by the clerk  
297 of the court. Only the actual costs charged by the newspaper for  
298 the advertisement, publication, or notice may be charged as  
299 costs in the action.

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300

Section 6. This act shall take effect July 1, 2006.

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Bill No. **HB 0065 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Economic Development, Trade & Banking Committee

Representative(s) Porth offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Subsections (1) through (7) of section 45.031, Florida Statutes, are amended to read:

45.031 Judicial sales procedure.--In any sale of real or personal property under an order or judgment, the procedures set forth in ss. 45.031-035 ~~following procedure~~ may be followed as an alternative to any other sale procedure if so ordered by the court:

(1) FINAL JUDGMENT SALE BY CLERK.--In the order or final judgment, the court shall direct the clerk to sell the property at public sale on a specified day that shall be not less than 20 days or more than 35 days after the date thereof, on terms and conditions specified in the order or judgment. A sale may be held more than 35 days after the date of final judgment or order if the plaintiff or plaintiff's attorney consents to such time. The final judgment shall contain the following statement in conspicuous type:



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23  
24 IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE  
25 ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE  
26 ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THIS  
27 FINAL JUDGMENT.

28  
29 IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS  
30 REMAINING AFTER THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK  
31 NO LATER THAN 60 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A  
32 CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

33  
34 IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS  
35 YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER  
36 REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO  
37 ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE  
38 ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, [INSERT  
39 INFORMATION FOR APPLICABLE COURT] WITHIN TEN (10) DAYS AFTER THE  
40 SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE  
41 SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

42  
43 IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU  
44 CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL  
45 PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN  
46 ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU,  
47 TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT  
48 YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR  
49 PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD TO  
50 PAY AN ATTORNEY, YOU MAY CONTACT (INSERT LOCAL OR NEAREST LEGAL  
51 AID OFFICE AND TELEPHONE PHONE NUMBER) TO SEE IF YOU QUALIFY  
52 FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY  
53 MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR

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54 SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT (NAME OF LOCAL  
55 OR NEAREST LEGAL AID OFFICE) FOR ASSISTANCE, YOU SHOULD DO SO AS  
56 SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

57  
58 A copy of the final judgment shall be furnished by the clerk by  
59 first class mail to the last known address of every party in the  
60 action or to the attorney of record for such party. Any  
61 irregularity in such mailing, including the failure to include  
62 this statement in any final judgment or order, shall not affect  
63 the validity or finality of the final judgment or order or any  
64 sale held pursuant thereto. Any sale held more than 35 days  
65 after the final judgment or order shall not affect the validity  
66 or finality of the final judgment or order or any sale held  
67 pursuant thereto.

68 (2) PUBLICATION OF SALE.--Notice of sale shall be published  
69 once a week for 2 consecutive weeks in a newspaper of general  
70 circulation, as defined in chapter 50, published in the county  
71 where the sale is to be held. The second publication shall be at  
72 least 5 days before the sale. The notice shall contain:

73 (a) A description of the property to be sold.

74 (b) The time and place of sale.

75 (c) A statement that the sale will be made pursuant to the  
76 order or final judgment.

77 (d) The caption of the action.

78 (e) A statement that any person claiming an interest in  
79 the surplus from the sale, if any, other than the property owner  
80 as of the date of the lis pendens, must file a claim within 60  
81 days after the sale.

82 (f) The name of the clerk making the sale.

83  
84 ~~The clerk shall receive a service charge of up to \$60 for~~

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85 ~~services in making, recording, and certifying the sale and title~~  
86 ~~that shall be assessed as costs.~~ The court, in its discretion,  
87 may enlarge the time of the sale. Notice of the changed time of  
88 sale shall be published as provided herein.

89 (3) CONDUCT OF SALE; ~~(2)~~ DEPOSIT REQUIRED.--The sale shall  
90 be conducted at public auction at the time and place set forth  
91 in the final judgment. The clerk shall receive the service  
92 charge set in s. 45.035 for services in making, recording, and  
93 certifying the sale and title that shall be assessed as costs.  
94 At the time of the sale, the successful high bidder shall post  
95 with the clerk a deposit equal to 5 percent of the final bid.  
96 The deposit shall be applied to the sale price at the time of  
97 payment. If final payment is not made within the prescribed  
98 period, the clerk shall readvertise the sale as provided in this  
99 section and pay all costs of the sale from the deposit. Any  
100 remaining funds shall be applied toward the judgment.

101 (4) ~~(3)~~ CERTIFICATION OF SALE.--After a sale of the  
102 property the clerk shall promptly file a certificate of sale and  
103 serve a copy of it on each party ~~not in default~~ in substantially  
104 the following form:

105  
106 (Caption of Action)

107  
108 CERTIFICATE OF SALE  
109

110 The undersigned clerk of the court certifies that notice of  
111 public sale of the property described in the order or final  
112 judgment was published in \_\_\_\_\_, a newspaper circulated in \_\_\_\_\_  
113 County, Florida, in the manner shown by the proof of publication  
114 attached, and on \_\_\_\_\_, (year) , the property was offered for  
115 public sale to the highest and best bidder for cash. The highest

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and best bid received for the property in the amount of \$  
was submitted by \_\_\_\_\_, to whom the property was sold. The  
proceeds of the sale are retained for distribution in accordance  
with the order or final judgment or law. WITNESS my hand and the  
seal of this court on \_\_\_\_\_, (year) .

(Clerk)

By (Deputy Clerk)

(5) ~~(4)~~ CERTIFICATE OF TITLE.--If no objections to the  
sale are filed within 10 days after filing the certificate of  
sale, the clerk shall file a certificate of title and serve a  
copy of it on each party ~~not in default~~ in substantially the  
following form:

(Caption of Action)

CERTIFICATE OF TITLE

The undersigned clerk of the court certifies that he or she  
executed and filed a certificate of sale in this action on  
\_\_\_\_\_, (year) , for the property described herein and that no  
objections to the sale have been filed within the time allowed  
for filing objections.

The following property in \_\_\_\_\_ County, Florida:  
(description)  
was sold to .

WITNESS my hand and the seal of the court on \_\_\_\_\_, (year) .  
(Clerk)

By (Deputy Clerk)

(6) ~~(5)~~ CONFIRMATION; RECORDING.--When the certificate of  
title is filed the sale shall stand confirmed, and title to the

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property shall pass to the purchaser named in the certificate without the necessity of any further proceedings or instruments.

~~(6) RECORDING.~~ The certificate of title shall be recorded by the clerk.

(7) DISBURSEMENTS OF PROCEEDS.--

(a) On filing a certificate of title, the clerk shall disburse the proceeds of the sale in accordance with the order or final judgment and shall file a report of such disbursements and serve a copy of it on each party ~~not in default~~, and on the Department of Revenue if the department was named as a defendant in the action or if the Agency for Workforce Innovation or the former Department of Labor and Employment Security was named as a defendant while the Department of Revenue was providing unemployment tax collection services under contract with the Agency for Workforce Innovation through an interagency agreement pursuant to s. 443.1316~~7~~.

(b) The Certificate of Disbursements shall be in substantially the following form:

(Caption of Action)

CERTIFICATE OF DISBURSEMENTS

The undersigned clerk of the court certifies that he or she disbursed the proceeds received from the sale of the property as provided in the order or final judgment to the persons and in the amounts as follows:

Name	Amount
------	--------

Total Disbursements:	\$ _____
----------------------	----------

Surplus Retained by Clerk (if any):	\$ _____
-------------------------------------	----------

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178  
179 IF YOU ARE A PERSON CLAIMING A RIGHT TO FUNDS REMAINING AFTER  
180 THE SALE, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN 60  
181 DAYS AFTER THE SALE. IF YOU FAIL TO FILE A CLAIM, YOU WILL NOT  
182 BE ENTITLED TO ANY REMAINING FUNDS. AFTER 60 DAYS, ONLY THE  
183 OWNER OF RECORD AS OF THE DATE OF THE LIS PENDENS MAY CLAIM THE  
184 SURPLUS.

185  
186 WITNESS my hand and the seal of the court on \_\_\_\_\_, (year) .  
187 (Clerk)

188 By (Deputy Clerk)  
189

190 (c) If no objections to the report are served within 10  
191 days after it is filed, the disbursements by the clerk shall  
192 stand approved as reported. If timely objections to the report  
193 are served, they shall be heard by the court. Service of  
194 objections to the report does not affect or cloud the title of  
195 the purchaser of the property in any manner.

196 (d) If there are funds remaining after payment of all  
197 disbursements required by the final judgment of foreclosure and  
198 shown on the certificate of disbursements, the surplus shall be  
199 distributed as provided for in ss. 45.032-.035.

200 Section 2. Section 45.032, Florida Statutes, is created to  
201 read:

202 45.032 Disbursement of surplus funds after judicial  
203 sale.--

204 (1) For purposes of ss. 45.031-.035, the term:

205 (a) "Owner of record" means the person or persons who  
206 appear to be the owner of the property that is the subject of  
207 the foreclosure proceeding on the date of the filing of the lis  
208 pendens. In determining an owner of record, one need not perform

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209 a title search and examination but may rely on the plaintiff's  
210 allegation of ownership in the complaint when determining the  
211 owner of record.

212 (b) "Subordinate lienholder" means the holder of a  
213 subordinate lien shown on the face of the pleadings as an  
214 encumbrance on the property. The lien being foreclosed on is  
215 not a subordinate lien. A subordinate lienholder includes, but  
216 is not limited to, a subordinate mortgage, judgment, assessment  
217 lien, or construction lien. However, the holder of a  
218 subordinate lien shall not be deemed a subordinate lienholder if  
219 the holder was paid in full from the proceeds of the sale.

220 (c) "Surplus funds" or "surplus" means the funds remaining  
221 after payment of all disbursements required by the final  
222 judgment of foreclosure and shown on the certificate of  
223 disbursements.

224 (d) "Surplus trustee" means a person qualifying as a  
225 surplus trustee pursuant to s. 45.034.

226 (2) There is established a rebuttable legal presumption  
227 that the owner of record on the date of the filing of a lis  
228 pendens is the person entitled to surplus funds after payment of  
229 subordinate lienholders who have timely filed a claim. A person  
230 claiming a legal right to the surplus as an assignee of the  
231 rights of the owner of record must prove to the court that the  
232 person is entitled to the funds. At any hearing regarding such  
233 entitlement, the court shall consider the factors set forth in  
234 s. 45.033 in determining whether an assignment is sufficient to  
235 overcome the presumption. The legislature intends hereby to  
236 abrogate the common law rule that surplus proceeds in a  
237 foreclosure case are the property of the owner of the property  
238 on the date of the foreclosure sale.

239 (3) During the 60 days after the clerk issues the

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Certificate of Disbursements, the clerk shall hold the surplus pending court order.

(a) If the owner of record claims the surplus during the 60 day period, and there is no subordinate lienholder, the court shall order the clerk to deduct any applicable service charges from the surplus and pay the remainder to the owner of record. The clerk may establish a reasonable requirement that the owner of record prove his or her identity before receiving the disbursement. The clerk may assist an owner of record in making a claim. An owner of record may use the following form in making a claim:

(Caption of Action)

OWNER'S CLAIM FOR MORTGAGE FORECLOSURE SURPLUS

State of \_\_\_\_\_

County of \_\_\_\_\_

Under penalty of perjury, I (we) hereby certify that:

1. I was (we were) the owner of the following described real property in \_\_\_\_\_ County, Florida, prior to the foreclosure sale and as of the date of the filing of the lis pendens:

(Legal description of real property)

2. I (we) do not owe any money on any mortgage on the property that was foreclosed other than the one that was paid off by the foreclosure.

3. I (we) do not owe any money that is the subject of an unpaid judgment, condominium lien, cooperative lien, or homeowner's association.



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4. I am (we are) not currently in bankruptcy.

5. I (we) have not sold or assigned my (our) right to the mortgage surplus.

6. My (our) new address is: .

7. If there is more than one owner entitled to the surplus, we have agreed that the surplus should be paid jointly, or to : , at the following address: .

8. I (WE) UNDERSTAND THAT I (WE) ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND I (WE) DO NOT HAVE TO ASSIGN MY (OUR) RIGHTS TO ANYONE ELSE IN ORDER TO CLAIM ANY MONEY TO WHICH I (WE) MAY BE ENTITLED.

8. I (WE) UNDERSTAND THAT THIS STATEMENT IS GIVEN UNDER OATH, AND IF ANY STATEMENTS ARE UNTRUE THAT I (WE) MAY BE PROSECUTED CRIMINALLY FOR PERJURY.

(Signatures)

Sworn to (or affirmed) and subscribed before me this day of , (year) , by (name of person making statement)

.

(Signature of Notary Public - State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification

Type of Identification Produced

(b) If any person other than the owner of record claims an interest in the proceeds during the 60 days, or if the owner of record files a claim for the surplus but acknowledges that one or more other persons may be entitled to part of all of the

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302 surplus, the court shall set an evidentiary hearing to determine  
303 entitlement to the surplus. At the evidentiary hearing, a  
304 grantee or assignee has the burden of proving that he or she is  
305 entitled to some or all of the surplus funds. The court may  
306 grant summary judgment to a subordinate lienholder prior to or  
307 at the evidentiary hearing. The court shall consider the  
308 factors in s. 45.033 when hearing a claim that any person other  
309 than a subordinate lienholder or the owner of record is entitled  
310 to the surplus funds.

311 (c) If no claim is filed in the 60 days, the clerk shall  
312 contact the Florida Clerks of Court Operations Corporation,  
313 established by s. 28.35, for appointment of a Surplus Trustee.  
314 The Florida Clerks of Court Operations Corporation shall make an  
315 appointment within 10 days. Upon assignment, the clerk shall  
316 prepare a Notice of Appointment of Surplus Trustee, and shall  
317 furnish a copy to the Surplus Trustee. The form of the notice  
318 may be as follows:

319  
320 (Caption of Action)

321  
322 NOTICE OF APPOINTMENT OF SURPLUS TRUSTEE

323  
324 The undersigned clerk of the court certifies that he or she  
325 disbursed the proceeds received from the sale of the property as  
326 provided in the order or final judgment to the persons named in  
327 the certificate of disbursements, and that surplus funds of  
328 \$ \_\_\_\_\_ remain and are subject to disbursement to the owner  
329 of record. You have been appointed as Surplus Trustee for the  
330 purpose of finding the owner or record in order for the clerk to  
331 disburse the surplus, after deducting costs, to the owner of  
332 record.

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WITNESS my hand and the seal of the court on \_\_\_\_\_, (year) .  
\_\_\_\_\_  
(Clerk)

By \_\_\_\_\_ (Deputy Clerk)

(4) If the Surplus Trustee is unable to locate the owner of record entitled to the surplus within one year of appointment, the appointment shall terminate and the clerk shall notify the Surplus Trustee that his or her appointment was terminated. Thirty days after termination of the appointment of the surplus trustee, the clerk shall treat the remaining funds as unclaimed property, to be deposited with the Chief Financial Officer pursuant to chapter 717.

(5) Proceedings regarding surplus funds in a foreclosure case do not affect or cloud the title of the purchaser at the foreclosure sale of the property in any manner.

Section 3. Section 45.033, Florida Statutes, is created to read:

45.033 Sale or assignment of rights to surplus funds in a property subject to foreclosure.--

(1) There is established a rebuttable legal presumption that the owner of record on the date of the filing of a lis pendens is the person entitled to surplus funds after payment of subordinate lienholders who have timely filed a claim. A person claiming a legal right to the surplus as an assignee of the rights of the owner of record must prove entitlement to the surplus funds pursuant to this section. The legislature intends hereby to abrogate the common law rule that surplus proceeds in a foreclosure case are the property of the owner of the property on the date of the foreclosure sale.

(2) The presumption may be rebutted only by:

(a) The grantee or assignee of a voluntary transfer or

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364 assignment proving the right to collect the surplus funds or any  
365 portion or percentage of the surplus funds by proving that the  
366 transfer or assignment qualifies as required by this section; or

367 (b) The grantee or assignee is a grantee or assignee by  
368 virtue of an involuntary transfer or assignment of the right to  
369 collect the surplus. An involuntary transfer or assignment may  
370 be as a result of inheritance or as a result of the appointment  
371 of a guardian.

372 (3) A voluntary transfer or assignment shall be a transfer  
373 or assignment qualified under this subsection, thereby entitling  
374 the transferee or assignee to the surplus funds, or a portion or  
375 percentage of the surplus funds, if:

376 (a) The transfer or assignment is in writing, and the  
377 instrument:

378 1. If the instrument was executed prior to the foreclosure  
379 sale, the instrument includes a financial disclosure that  
380 specifies the assessed value of the property, a statement that  
381 the assessed value may be lower than the actual value of the  
382 property, the approximate amount of any debt encumbering the  
383 property, and the approximate amount of any equity in the  
384 property. If the instrument was executed after the foreclosure  
385 sale, the instrument must also specify the foreclosure sale  
386 price and the amount of the surplus.

387 2. Includes a statement that the owner does not need an  
388 attorney or other representative to recover surplus funds in a  
389 foreclosure.

390 3. Specifies all forms of consideration paid for the rights  
391 to the property or the assignment of the rights to any surplus  
392 funds.

393 (b) The transfer or assignment is filed with the court on  
394 or before 60 days after the filing of the Certificate of

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395 Disbursements.

396 (c) There are funds available to pay the transfer or  
397 assignment after payment of timely filed claims of subordinate  
398 lienholders.

399 (d) The transferor or assignee is qualified as a surplus  
400 trustee, or could qualify as a surplus trustee, pursuant to s.  
401 45.034.

402 (4) The court shall honor a transfer or assignment that  
403 complies with the requirements set forth in subsection (3), in  
404 which case the court shall order to the clerk to pay the  
405 transferor or assignee from the surplus.

406 (5) If the court finds that a voluntary transfer or  
407 assignment does not qualify under subsection (3), but that it  
408 was procured in good faith and with no intent to defraud the  
409 transferor or assignor, the court may order the clerk to pay  
410 claim of the transferee or assignee after payment of timely  
411 filed claims of subordinate lienholders.

412 (6) If a voluntary transfer or assignment of the surplus  
413 is set aside, the owner of record shall be entitled to payment  
414 of the surplus funds after payment of timely filed claims of  
415 subordinate lienholders; but the transferee or assignee may, in  
416 a separate proceeding, seek repayment of any consideration paid  
417 for the transfer or assignment.

418 (7) This section does not apply to a deed, mortgage, or  
419 deed in lieu of foreclosure unless a person other than the owner  
420 of record is claiming that a deed or mortgage entitles the  
421 person to surplus funds. Nothing in this section affects the  
422 title or marketability of the real property that is the subject  
423 of the deed or other instrument. Nothing in this section affects  
424 the validity of a lien evidenced by a mortgage.

425 Section 4. Section 45.034, Florida Statutes, is created to

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read:

45.034 Qualifications and appointment of a surplus trustee in foreclosure actions.--

(1) A surplus trustee is a third party trustee approved, pursuant to this section, by the Florida Clerks of Court Operations Corporation, established by s. 28.35. A surplus trustee must be willing to accept cases on a statewide basis; however, a surplus trustee may employ subcontractors that are not qualified as a surplus trustee provided that the surplus trustee remains primarily responsible for the duties set forth in this section.

(2) A surplus trustee must apply for certification with the Florida Clerks of Court Operations Corporation. The application must contain:

(a) The name and address of the entity and of one or more principals of the entity.

(b) A certificate of good standing from the Florida Secretary of State indicating that the entity is a Florida entity.

(c) A statement under oath by a principal of the entity certifying that the entity, or a principal of the entity, has a minimum of 12 months experience in the recovery of surplus funds in foreclosure actions.

(d) Proof that the entity hold a valid Class "A" private investigators license, pursuant to ch. 493.

(e) Proof that the entity carries a minimum of \$500,000 in liability insurance, cash reserves or bonding.

(f) A statement from an attorney licensed to practice in the state certifying that the attorney is a principal of the entity or is employed by the entity on a full-time basis, and that the attorney will supervise the management of the entity

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457 during its tenure as a surplus trustee.

458 (g) A statement under oath by a principal of the entity  
459 certifying that the principal understands his or her duty to  
460 immediately notify the Florida Clerks of Court Operations  
461 Corporation should, in the future, ever fail to qualify as an  
462 entity entitled to be a surplus trustee.

463 (h) A nonrefundable application fee of \$25.

464 (3) The Florida Clerks of Court Operations Corporation  
465 shall certify any surplus trustee that applies and qualifies.  
466 Certification shall be on a calendar year basis. The  
467 corporation may renew a qualification upon receipt of the \$25  
468 fee and a statement under oath from a principal of the surplus  
469 trustee certifying that the surplus trustee continues to qualify  
470 under this section.

471 (4) The corporation shall develop a rotation system for  
472 assignment of cases to all qualified surplus trustees. Upon  
473 notification by a clerk that the clerk is holding a surplus, the  
474 Florida Clerks of Court Operations Corporation assigns the case  
475 to the next qualified surplus trustee in the rotation.

476 (5) The primary duty of a surplus trustee is to locate the  
477 owner of record within one year of appointment. Upon locating  
478 the owner of record, the surplus trustee has the duty to file a  
479 petition with the court on behalf of the owner of record seeking  
480 disbursement of the surplus funds. If more than one person  
481 appears to be the owner of record, the surplus trustee has the  
482 duty to either obtain agreement between such persons as to the  
483 payment of the surplus, or file an interpleader. Such  
484 interpleader may be filed as part of the foreclosure case.

485 (6) A surplus trustee shall be entitled to the following  
486 service charges and fees, which shall be disbursed by the clerk  
487 and payable from the surplus:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

488        (a) Upon notice of appointment, a cost advance of 2% of the  
489 surplus.

490        (b) Upon obtaining a court order disbursing the surplus to  
491 the owner of record, a service charge of 10% of the surplus.

492        Section 5. Section 46.035, Florida Statutes, is created to  
493 read:

494        45.035 Clerk's fees.--In addition to other fees or service  
495 charges authorized by law, the clerk shall receive service  
496 charges related to the judicial sales procedure set forth in ss.  
497 45.031-45.035:

498        (1) The clerk shall receive a service charge of \$60 for  
499 services in making, recording, and certifying the sale and  
500 title, that shall be assessed as costs and that shall be  
501 advanced by the plaintiff before the sale.

502        (2) If there is a surplus resulting from the sale, the  
503 clerk may receive the following service charges, which shall be  
504 deducted from the surplus:

505        (a) The clerk may withhold the sum of \$25 from the surplus,  
506 which may only be used for purposes of educating the public as  
507 to the rights of homeowners regarding foreclosure proceedings.

508        (b) The clerk shall be entitled to a service charge of \$10  
509 for notifying a surplus trustee of his or her appointment.

510        (c) The clerk shall be entitled to a service charge of \$10  
511 for each disbursement of surplus proceeds.

512        (d) The clerk shall be entitled to a service charge of \$10  
513 for contacting the Florida Clerks of Court Operations  
514 Corporation for assignment of the case to a surplus trustee,  
515 furnishing the surplus trustee with a copy of the final judgment  
516 and the certificate of disbursements, and disbursing to the  
517 surplus trustee the trustee's cost advance.

518        Section 6. Section 501.2078, Florida Statutes, is created



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

to read:

501.2078 Violations involving individual homeowners during the course of residential foreclosure proceedings; civil penalties.--

(1) As used in this section:

(a) "Homeowner" means any individual who is the owner of real property subject to a residential foreclosure proceeding.

(b) "Residential foreclosure proceeding" means any action in a court of this state in which a party seeks to foreclose on a mortgage encumbering the mortgagor's primary dwelling.

(c) "Victimize" means any course of action intended to dupe, swindle or cheat a homeowner subject to a residential foreclosure proceeding. The factors that a court shall review when determining whether a course of action is victimizing a homeowner are:

1. The compensation received relative to the risk and the amount of work involved.

2. The number of homeowners involved.

3. The relative bargaining position of the parties.

4. The relative knowledge and sophistication of the parties.

5. Representations made in the inducement.

6. The timing of the agreement.

(2) Any person, other than a financial institution as defined in s. 655.005, who willfully uses, or has willfully used, a method, act, or practice in violation of this part, which method, act, or practice victimizes or attempts to victimize homeowners during the course of a residential foreclosure proceeding, and in committing such violation knew or should have known that such conduct was unfair or deceptive, is liable for a civil penalty of not more than \$15,000 for each

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

550 such violation.

551 (3) Any order of restitution or reimbursement based on a  
552 violation of this part committed against a homeowner in a  
553 residential foreclosure proceeding has priority over the  
554 imposition of any civil penalty for such violation pursuant to  
555 this section.

556 (4) Civil penalties collected pursuant to this section  
557 shall be deposited into the Legal Affairs Revolving Trust Fund  
558 of the Department of Legal Affairs and allocated solely to the  
559 Department of Legal Affairs for the purpose of preparing and  
560 distributing consumer education materials, programs, and  
561 seminars to benefit homeowners in residential foreclosure  
562 proceedings or to further enforcement efforts.

563 (5) This section does not apply to:

564 (a) The act of encumbering the dwelling subject to a  
565 residential foreclosure proceeding with a substitute or  
566 additional lien.

567 (b) A deed in lieu of foreclosure, a workout agreement, a  
568 bankruptcy plan, or any other agreement between a foreclosing  
569 lender and a homeowner.

570 (c) Any action taken by a lender, mortgage broker, assignee  
571 of a mortgage, or counsel for any such entity, in foreclosing a  
572 mortgage or collecting on the note.

573 Section 7. Section 702.035, Florida Statutes, is amended  
574 to read:

575 702.035 Legal notice concerning foreclosure  
576 proceedings.--Whenever a legal advertisement, publication, or  
577 notice relating to a foreclosure proceeding is required to be  
578 placed in a newspaper, it is the responsibility of the  
579 petitioner or petitioner's attorney to place such advertisement,  
580 publication, or notice. The advertisement, publication, or

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

notice shall be placed directly by the attorney for the petitioner, by the petitioner if acting pro se, or by the clerk of the court. Only the actual costs charged by the newspaper for the advertisement, publication, or notice may be charged as costs in the action.

Section 8. This act shall take effect July 1, 2006.

===== T I T L E   A M E N D M E N T =====

Remove the entire title and insert:

An act relating to foreclosure proceedings; amending s. 45.031, F.S.; adding required statement for inclusion into a final judgment of foreclosure; requiring the clerk to furnish a copy of the final judgment to parties; amending information required to be in a notice of sale; amending the form of a certificate of disbursements; creating s. 45.032, F.S.; providing definitions; establishing a presumption of entitlement to surplus funds in certain filings; providing for disbursement of surplus funds by the clerk of court; giving foreclosed owner 60 days to claim surplus; providing form for claim; providing that persons other than foreclosed owner have 60 days to file a claim or be barred; requiring evidentiary hearing; providing for appointment of a surplus trustee; providing time limits for surplus trustee; creating s. 45.033, F.S.; providing requirements for a sale or assignment of rights to surplus funds in a foreclosure proceeding; creating a rebuttable presumption of entitlement to certain funds; providing requirements for transfers or assignments in rebuttal; providing for nonapplication to certain instruments; specifying absence of effect on title or marketability of certain property or validity of certain

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

612 | liens; creating s. 45.034, F.S.; providing qualifications  
613 | of a surplus trustee; providing for appointment of a  
614 | surplus trustee; providing fees; creating s. 45.035, F.S.;  
615 | providing for clerk's fees in foreclosure actions;  
616 | creating s. 501.2078, F.S.; providing definitions;  
617 | providing a civil penalty for knowingly using unfair or  
618 | deceptive homeowner victimization methods, acts, or  
619 | practices in residential foreclosure proceedings;  
620 | specifying higher priority of an order of restitution or  
621 | reimbursement over imposition of a civil penalty;  
622 | providing for deposit of civil penalties into the Legal  
623 | Affairs Revolving Trust Fund of the Department of Legal  
624 | Affairs; allocating such funds for certain purposes;  
625 | providing exceptions; specifying nonapplication to certain  
626 | encumbrances; amending s. 702.035, F.S.; limiting costs  
627 | chargeable in a foreclosure proceeding; providing an  
628 | effective date.

HB 1141  
Stargel

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1141

Conveyances of Land

**SPONSOR(S):** Stargel

**TIED BILLS:** None

**IDEN./SIM. BILLS:** SB 1434

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	7 Y, 0 N	Shaddock	Bond
2) Economic Development, Trade & Banking Committee		Olmedillo <i>JO</i>	Carlson <i>MWC</i>
3) Justice Council			
4)			
5)			

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### SUMMARY ANALYSIS

An Individual Retirement Account ("IRA") is an investment tool that permits qualifying individuals to save and invest for retirement, with certain federal income tax advantages. Although IRAs have long been able to invest in real estate, it was not until recently that there has been significant interest in placing real estate investments into an IRA. Current Florida law is unclear as to how an IRA can take title to real property.

The bill specifies how retirement investment plans, such as IRAs and other qualified plans, may accept, hold, and transfer title to real property.

This bill does not appear to have a fiscal impact on state or local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty -- This bill increases the options of an individual regarding the conduct of his or her own affairs in the retirement arena.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background:

Individual Retirement Accounts (IRAs) and other qualified plans are the second most popular type of account per household; behind the family checking account. Normally, IRAs and qualified plans are governed by the Internal Revenue Code and are affected by that states through state real property laws.

Investing an IRA in real estate is permitted by the federal tax code. In the early days of IRAs, the only place that an IRA owner could go to invest an IRA in real estate or another type of alternative investment was a traditional trust company. If you could meet the minimum account size, which used to be at least \$300,000 of investable assets, then the bank might be willing to accommodate the IRA owner's investment preferences. Now there is a proliferation of IRA providers who specialize in nothing but self-directed IRAs.<sup>1</sup> Many of them have minimum account sizes that are as low as the annual IRA contribution limits.

##### The IRS Rules

IRAs are created under ss. 408 and 408A of the Internal Revenue Code.<sup>2</sup> IRAs can be created by contribution subject to annual dollar limits, or by rollover from a qualified plan. Section 408 requires a written agreement containing certain required provisions.

The IRS has issued forms 5305 and 5305A as Model IRA Agreements. Form 5305A is clear that despite the fact that the IRA owner may direct investments and retain most "traditional" powers that might otherwise create a passive trust, such direction by the IRA owner will not cause the assets of the IRA to be treated as owned by the IRA owner. All IRAs are required to be held by a trustee or custodian approved by the IRS to hold IRA assets. The IRA owner cannot normally take out distributions prior to age 59 ½ without a penalty, and except in the case of a Roth IRA,<sup>3</sup> must start taking distributions out by April 1<sup>st</sup> of the year after the year in which they turn 70½. No one has rights in an IRA during the lifetime of the IRA owner except the IRA owner, and there is no such thing as an irrevocable beneficiary designation during lifetime because the IRA must always belong to the individual it was established for during the lifetime of that individual.

<sup>1</sup> A self-directed IRA is an Individual Retirement Account established with a broker instead of a mutual fund or a bank and enables the consumer to buy and sell individual stocks directly. *Self-Directed IRAs*, <http://www.fool.com/fool/askfool/1999/askfool990714.htm>.

<sup>2</sup> 26 U.S.C. ss. 408, 408A.

<sup>3</sup> "The Roth IRA provides no deduction for contributions, but instead provides a benefit that isn't available for any other form of retirement savings: if you meet certain requirements, all earnings are tax free when you or your beneficiary withdraw them. Other benefits include avoiding the early distribution penalty on certain withdrawals, and avoiding the need to take minimum distributions after age 70½." *Roth IRA 101*, (last visited Mar. 9, 2006)

<http://www.fairmark.com/rothira/roth101.htm>.

Qualified plans<sup>4</sup> have rules that are basically the same as those for IRAs. There are penalties for withdrawal before the appropriate age, and in some cases withdrawals are prohibited until retirement or separation from service. All plans will have a written agreement, a trustee and a plan administrator; but it is important to note that some plans allow the participant to direct investments within their account.

### The Prohibited Transaction Rules

There are additional rules for alternative investing with IRAs. Section 4975 of the Internal Revenue Code deals with prohibited transactions, and the main focus of this section is self-dealing.<sup>5</sup> If a transaction within an IRA is deemed prohibited, it can result in the disqualification of the entire account as of the first day of the tax year within the year that the transaction occurred. This can result in unexpected income tax liability, as well as penalties for early distribution if the IRA owner is under 59½. Although there is no place in the Internal Revenue Code that defines permissible investments, s. 4975 addresses what is prohibited, subject to exceptions:<sup>6</sup>

- The sale, exchange, or leasing of any property between an IRA and any disqualified person;
- The lending of money or other extensions of credit between an IRA and any disqualified person;
- The furnishing of goods, services, or facilities between any disqualified person and an IRA;
- The transfer to any disqualified person or use by any disqualified person (or for the disqualified person's benefit) of the income or assets of an IRA; or
- The receipt by any disqualified person of any consideration in connection with a transaction involving my IRA.

A "disqualified person" as defined under Internal Revenue Code s. 4975 includes, but is not limited to, the following:<sup>7</sup>

- The IRA owner;
- The IRA owner's spouse;
- The IRA beneficiary;
- The IRA owner's ancestors and lineal descendants;
- Spouses of the IRA owner's lineal descendants;
- Anyone providing services to the IRA, including the IRA Custodian and any investment managers or advisors;
- Any corporation, partnership, trust or estate in which the IRA owner individually has a 50% or greater interest.

Provided that an IRA does not engage in a prohibited transaction, alternative types of investments will not disqualify the account and will allow the IRA owner to enjoy tax-deferred growth.

There are additional pitfalls which involve possible Unrelated Business Income Tax ("UBTI"). Retirement plan income that is generated from a trade or business regularly carried on by such account that is not substantially related to its tax-exempt purpose could be subject to UBTI, which is ordinary income at the trust tax rate, payable by the IRA account. Leveraging of real estate can create Unrelated Debt-Financed Income ("UDFI").

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<sup>4</sup> A qualified plan is established by an employer to provide retirement benefits for employees and their beneficiaries." *401(k) and Qualified Plans: Introduction*, (last visited Mar. 9, 2006) <<http://www.investopedia.com/university/retirementplans/qualifiedplan/>>.

<sup>5</sup> 26 U.S.C. s. 4975.

<sup>6</sup> 26 U.S.C. s. 4975(c)(1).

<sup>7</sup> 26 U.S.C. s. 4975(e)(2).



## Current law

Under common law, an IRA meets the simplest definition of a trust, insofar as it is required that one person hold property for the benefit of another. The trustee or custodian must generally be a financial institution, unless the trustee can demonstrate to the IRS that it is capable of administering an IRA. Although the IRS considers all IRA custodians to be trustees as well, most IRA agreements offer a choice of some sort of institutionally managed product ("bank-managed") or what is referred to as a "self-directed" account. In the bank-managed product, the IRA owner is asked to select an investment objective and then allows the institution to make investment decisions and trade on the account based upon the investment objective established by the IRA owner.

In contrast, a self-directed account will have all of the investments chosen by the IRA owner. Sometimes self-directed IRA accounts will be invested in traditional stocks and bonds because perhaps the IRA owner has the skill and experience to pick and choose the investments of the account. In other situations, these accounts are invested in alternative types of investments, such as LLCs, limited partnerships, mortgage receivables, promissory notes, or real property. On rare occasions, it is possible to find an alternative investment within a bank-managed IRA because the IRA owner has instructed the trustee or custodian to purchase and/or retain the asset, but it is important to note that alternative investments are not products traditionally sold to IRA owners within the context of a bank-managed IRA relationship.

Section 408(h) of the Internal Revenue Code expressly states that IRA custodial accounts are treated as IRA trusts so long as the assets of the account are held by a bank, trust company or other specified entity, and that an IRA custodian is treated as a trustee for all Code purposes. In the event that federal taxes (UBIT or UDFI) are imposed on an IRA, the IRA is taxed at the trust tax rate.

The bill seeks to clarify how title is taken in regard to self-directed IRAs. Several title companies have taken the position that if the IRA has a custodian as opposed to a trustee, the IRA is no more than a passive trust under the Statute of Uses<sup>8</sup> and therefore the title cannot vest in the custodian or the account and would vest in the IRA owner. Such a position could have a negative impact on certain retirement investors.

On the surface one would assume that qualified plans would not be potentially impacted by this interpretation because they require a trust agreement; however, depending upon the document, if the plan allows the participant to direct the investments, there is the potential that a similar result might occur under current state law within a plan context.

Currently the only exception to the Statute of Uses that allows a custodian to take title is found in the Florida Uniform Gift to Minors Act (s. 710.111(1)(e), F.S.). There has never been a proper method for taking title to real estate in IRAs or qualified plans prescribed in the Florida Statutes, and similarly there is not currently an exception for same under the Statute of Uses.

### **Effect of Proposed Changes:**

The bill would carve out an exception to the Statute of Uses for IRAs and Qualified Plans and prescribe the correct manner in which title should be taken to real property purchased within these accounts. The bill is not determinative as to whether an IRA is considered a trust under state law, but rather provides a manner for taking title by creating an exception to the Statute of Uses.

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<sup>8</sup> s. 689.09, F.S. "The Statute of Uses was enacted in 1535 to remedy the problems caused by dual legal and equitable ownership of land. Equitable ownership had arisen as a means of avoiding the legal requirements of land transfer and the feudal incidents of legal land ownership. The statute provided that anyone with beneficial ownership of land should henceforth be deemed to be the legal owner." *Chase Fed. Sav. And Loan Ass'n. v. Schreiber*, 479 So. 2d 90, 97 (Fla. 1986).

The bill provides clarification as to taking title to real property in IRAs and qualified plans by covering all title taken in a manner consistent with the Statute of Uses, whether previously recorded or not, setting forth a template for vesting title to IRA custodians and trustees as well as Qualified Plan custodians and trustees. The bill grants powers to the custodian or trustee and allows further disposition of the property by the custodian or trustee without the joinder of the beneficiary, except in the case of a revocation or termination. This presumes that the custodian or trustee will obtain whatever type of authorization they need from the IRA owner or qualified plan participant subject to the terms of the contractual agreement between the parties.

The bill allows third parties to rely on the powers of the custodian or trustee regardless of whether the powers clause is recorded on the deed, and third parties have no duty to inquire as to the qualifications of the trustee or custodian. Title conveyed under this section by a custodian or trustee will be taken free and clear of the claims of the IRA owner, plan participant or beneficiary.

The bill also provides that if notice of revocation or termination of an IRA or qualified plan is recorded, any disposition or encumbrance of such property will be executed by the custodian or trustee and will require the joinder of the IRA owner or plan participant, provides that the standard of care for a custodian or trustee will be that observed by a prudent person dealing with property of another and does not impose fiduciary duties on a custodian that they would not otherwise bear, but despite the remedial nature of the statute will not relieve a custodian or trustee for breach of a contractual agreement with the IRA owner or plan participant.

Further, the bill provides that when a provision is recorded that declares the interest to be personal property, that provision will be controlling for state law purposes, defines IRAs and qualified plans pursuant to the Internal Revenue Code, and defines beneficiaries to only be applicable when the IRA owner or qualified plan participant is deceased. It specifically excludes transfers under this section from the Statute of Uses, and proposes that this section will be remedial in nature and should be given liberal interpretation.

#### C. SECTION DIRECTORY:

Section 1, creates s. 689.072, which carves out an exception for IRAs and Qualified Plans and prescribes the correct manner in which title should be taken to real property purchased within these accounts.

Section 2, provides an effective date of July 1, 2006.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The sentence construction on line 54 is incorrect. The first "the" in that line should be deleted for clarity and grammatical correctness.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.

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1 A bill to be entitled

2 An act relating to conveyances of land; creating s.  
3 689.072, F.S.; providing for the transfer and creation of  
4 custodial property in an individual retirement account or  
5 certain qualified plans; incorporating statutory  
6 provisions into such transfer; providing powers to the  
7 custodian or trustee of such custodial property; providing  
8 protections for persons dealing with the custodian or  
9 trustee; exempting certain transfers from specific claims;  
10 providing for the disposition of custodial property held  
11 in an account, plan or custodianship that is terminated;  
12 providing a standard of care for the custodian or trustee;  
13 providing for certain declarations to control in specific  
14 legal proceedings; providing that provisions relating to  
15 deeds under statute of uses are not applicable to a  
16 transfer by a custodian or trustee under the act;  
17 providing for liberal construction; providing an effective  
18 date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22 Section 1. Section 689.072, Florida Statutes, is created  
23 to read:

24 689.072 Real estate interests transferred to or by a  
25 custodian or trustee of an individual retirement account or  
26 qualified plan.--

27 (1)(a) A conveyance, deed, mortgage, lease assignment, or  
28 other recorded instrument that transfers an interest in real

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29 property in this state, including a leasehold or mortgagee  
30 interest, to a person who is qualified to act as a custodian or  
31 trustee for an individual retirement account under 26 U.S.C. s.  
32 408(a)(2), as amended, in which instrument the transferee is  
33 designated "custodian," "as custodian," "trustee," or "as  
34 trustee" and the account owner or beneficiary of the  
35 custodianship in the individual retirement account is named,  
36 creates custodial property and transfers title to the custodian  
37 or trustee when an interest in real property is recorded in the  
38 name of the custodian or trustee, followed by the words "as  
39 custodian or trustee for the benefit of (name of individual  
40 retirement account owner or beneficiary) individual retirement  
41 account."

42 (b) This section also applies to a qualified stock bonus,  
43 pension, or profit-sharing plan created under 26 U.S.C. s.  
44 401(a), as amended, in which instrument a person is designated  
45 "custodian," "as custodian," "trustee," or "as trustee" and the  
46 plan, plan participant, or plan beneficiary of the custodianship  
47 in the plan also creates custodial property and transfers title  
48 to the custodian or trustee when an interest in real property is  
49 recorded in the name of the custodian or trustee, followed by  
50 the words "as custodian, or trustee of the (name of plan) for  
51 the benefit of (name of plan participant or beneficiary)."

52 (2) A transfer to a custodian or trustee of an individual  
53 retirement account or qualified plan pursuant to this section  
54 the incorporates the provisions of this section into the  
55 disposition and grants to the custodian or trustee the power to  
56 protect, conserve, sell, lease, encumber, or otherwise manage

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57 and dispose of the real property described in the recorded  
58 instrument without joinder of the named individual retirement  
59 account owner, plan participant, or beneficiary, except as  
60 provided in subsection (5).

61 (3) A person dealing with the custodian or trustee does  
62 not have a duty to inquire as to the qualifications of the  
63 custodian or trustee and may rely on the powers of the custodian  
64 or trustee for the custodial property created under this section  
65 regardless of whether such powers are specified in the recorded  
66 instrument. A grantee, mortgagee, lessee, transferee, assignee,  
67 or person obtaining a satisfaction or release or otherwise  
68 dealing with the custodian or trustee regarding such custodial  
69 property is not required to inquire into:

70 (a) The identification or status of any named individual  
71 retirement account owner, plan participant, or beneficiary of  
72 the individual retirement account or qualified plan or his or  
73 her heirs or assigns to whom a custodian or trustee may be  
74 accountable under the terms of the individual retirement account  
75 agreement or qualified plan document;

76 (b) The authority of the custodian or trustee to act  
77 within and exercise the powers granted under the individual  
78 retirement account agreement or qualified plan document;

79 (c) The adequacy or disposition or any consideration  
80 provided to the custodian or trustee in connection with any  
81 interest acquired from such custodian or trustee; or

82 (d) Any provision of an individual retirement account  
83 agreement or qualified plan document.

84 (4) A person dealing with the custodian or trustee under

85 the recorded instrument takes any interest transferred by such  
86 custodian or trustee, within the authority provided under this  
87 section, free of claims of the named owner, plan participant, or  
88 beneficiary of the individual retirement account or qualified  
89 plan or of anyone claiming by, through, or under such owner,  
90 plan participant, or beneficiary.

91 (5) If notice of the revocation or termination of the  
92 individual retirement account agreement, qualified plan, or  
93 custodianship established under such individual retirement  
94 account agreement or qualified plan is recorded, any disposition  
95 or encumbrance of the custodial property must be by an  
96 instrument executed by the custodian or trustee or the successor  
97 and the respective owner, plan participant, or beneficiary of  
98 the individual retirement account or qualified plan.

99 (6) In dealing with custodial property created under this  
100 section, a custodian or trustee shall observe the standard of  
101 care of a prudent person dealing with property of another  
102 person. This section does not relieve the custodian or trustee  
103 from liability for breach of the individual retirement account  
104 agreement, custodial agreement, or qualified plan document.

105 (7) A provision of the recorded instrument that defines  
106 and declares the interest of the owner, plan participant, or  
107 beneficiary of the individual retirement account or qualified  
108 plan to be personal property controls only if a determination  
109 becomes an issue in any legal proceeding.

110 (8) As used in this section, the term "beneficiary"  
111 applies only when the individual retirement account owner or  
112 qualified plan participant is deceased.

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113        (9) (a) This section does not apply to any deed, mortgage,  
 114        or instrument to which s. 689.071 applies.

115        (b) Section 689.09 does not apply to transfers of real  
 116        property interests to a custodian or trustee under this section.

117        (10) This section is remedial and shall be liberally  
 118        construed to effectively carry out its purposes.

119        Section 2. This act shall take effect July 1, 2006.





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1211

Notification Regarding the State Minimum Wage

**SPONSOR(S):** Fields

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 786

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade &amp; Banking Committee</u>	_____	Olmedillo <u>JO</u>	Carlson <u>MNC</u>
2) <u>Transportation &amp; Economic Development Appropriations Committee</u>	_____	_____	_____
3) <u>Commerce Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

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### SUMMARY ANALYSIS

This bill requires each employer who must pay an employee the Florida minimum wage to display a poster in a conspicuous and accessible place at a worksite indicating the applicable wage. The bill requires the Agency for Workforce Innovation (AWI) to create the required posters in English and in Spanish and make them available to employers on or before December 1st of each year. Under this bill, each poster must contain specific language outlining the restrictions on employers, the rights of employees, and the penalties for non-compliance with Florida's minimum wage law. The bill also provides formatting, font and size requirements for the posters.

This bill creates an unnumbered section of the Florida Statutes.

The bill provides an effective date of July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not seem to implicate any of the house principals.

#### B. EFFECT OF PROPOSED CHANGES:

##### ***Florida Minimum Wage Law***

During the 2005 Special Legislative Session (2005B), the Legislature passed, and the Governor approved, SB 18B creating the Florida Minimum Wage Act.<sup>1</sup> This bill implemented the provisions of s. 24, Art. X of the State Constitution which resulted from the passage of Constitutional Amendment #5 on the November 2, 2004, ballot. Senate Bill 18B replicated the provisions of the constitution and added additional provisions to do the following:

- Adopt the U.S. Consumer Price Index for the south region as the applicable index for determining the annual adjustments to the state minimum wage;
- Require the Agency for Workforce Innovation and the Department of Revenue to publish the annually updated minimum wage on their respective websites;
- Require employees to first notify employers before initiating a civil action to enforce their right to receive the state minimum wage;
- Allow employers 15 calendar days to resolve any claims for the unpaid wages before a suit may be filed;
- Limit the damages awarded to employees to only unpaid wages if the court determines the employer acted in good faith and had reasonable grounds for believing that their action was not in violation of the constitution;
- Restrict the court from awarding punitive damages;
- Impose restrictions on class action suits;
- Limit eligibility for the minimum wage to workers who are currently entitled to receive the federal minimum wage under the Fair Labor Standards Act (FLSA) and its associated implementing regulations; and
- Provide that the exemptions outlined in ss. 213 and 214 of FLSA are incorporated into the act by reference.

The act does not contain a posting requirement for employers.

##### ***States' Minimum Wage Posting Requirement***

Currently, several states have minimum wage requirements that differ from the federal minimum wage of \$5.15 per hour and \$2.13 for tipped employees. As of January 2006, Florida's minimum wage is \$6.40 per hour and \$3.38 for tipped employees. Eighteen states (including Florida) and the District of Columbia have minimum wages that are higher than the federal minimum wage.<sup>2</sup> Fourteen of those states and the District of Columbia also require employers to post the state minimum wage and related information. The states that have minimum wages higher than the federal wage and adhere to a posting requirement include: Alaska, California, Connecticut, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode Island, and Vermont. At least two states,

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<sup>1</sup> Chapter 2005-353, L.O.F.

<sup>2</sup> Those states include: Alaska, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode Island, Vermont, Washington and Wisconsin. Information compiled from U.S. Department of Labor, *Minimum Wage Laws in the States*, <http://www.dol.gov/esa/minwage/america.html>. December 2006; National Conference of State Legislatures, *State Minimum Wages*, <http://www.ncsl.org/programs/employ/stateminimumwages2006.htm>. 6 March 2006.

Washington and Wisconsin, recommend that minimum wage information be posted, but do not require it.<sup>3</sup>

Almost all of the states that have a posting requirement provide the posters, free of charge, on their Department of Labor website where they can be downloaded by employers and viewed by the public. However, it appears that none of the states that require posters prescribe the exact language in their statutes that the posters must contain as is proposed by HB 1211.

The bill sets forth requirements for AWI and employers with regard to posting the minimum wage. This section also describes the components that each poster should contain.

Subsection (1) states that the definitions of the terms "employer," "employee," and "wage," as used in the bill, will have the meanings assigned to them by the federal Fair Labor Standards Act. This subsection also defines "Florida minimum wage" as the wage an employee is required to pay pursuant to s. 24, Article X of the State Constitution.

The bill requires each employer who must pay Florida's minimum wage to prominently display a poster detailing the wage, restrictions on employers, rights of employees and penalties for non-compliance in the manner described in subsection (3).

Paragraph (3)(a) requires AWI to create and make available, on or before December 1 of each year, posters in English and Spanish regarding the minimum wage. This paragraph also provides the language that must be included in the posters. According to this paragraph, the posters must state:

- The minimum wage as of January 1 of each year;
- That the minimum wage is calculated yearly on September 30 using the consumer price index and will take effect each January 1<sup>st</sup>;
- That retaliation by employers against employees who exercise their rights under the minimum wage law is prohibited. Those rights include:
  - filing a complaint regarding an employer's noncompliance;
  - informing any person about an employer's noncompliance; and
  - informing any person of his or her rights under s. 24, Article X of the State Constitution;
- That an employee may file a civil action against an employer to recover back wages plus damages and attorney's fees;
- That an employer who intentionally violates the minimum wage requirements may be subject to a fine of \$1,000 per violation, payable to the state;
- That the Attorney General or other official appointed by the Legislature may bring a civil action to enforce the minimum wage; and
- That further information may be obtained from s. 24, Article X of the State Constitution.

The bill also states that the required poster must be 12 inches in height by 16 inches in width. The letters of the poster must be conspicuous in size and the letters of the first line must be larger than the letters of any other line. In addition, the letters of the first sentence must be in bold type and larger than the letters in the remaining lines.

#### C. SECTION DIRECTORY:

Section 1: creates an unnumbered section of the Florida Statutes related to specific posting requirements.

Section 2: creates an unnumbered section of the Florida Statutes to provide an effective date.

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<sup>3</sup> Carrie Campbell, Commerce Committee staff, researched the existence of posting requirements in states having a wage higher than the federal rate.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None.

#### **2. Expenditures:**

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Whether private businesses incur a cost in relation to this legislation depends on the method AWI chooses to disseminate this information to employers. Providing a free poster that may be downloaded would result in an indeterminable cost to employers who have internet access and the ability to print the posters.

### **D. FISCAL COMMENTS:**

The bill requires AWI to "make available" a poster to employers to post in the workplace regarding the Florida Minimum Wage. AWI estimates that the cost of developing a document, as specified in the proposed legislation, and posting the document to the agency's website to be downloaded and printed by an employer who required to post the document, is approximately \$120.00. Should AWI be required to design, print and mail posters to over 460,000 Florida employers, the agency has determined that cost to be a total of \$235,600 including printing and postage.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### **2. Other: None.**

### **B. RULE-MAKING AUTHORITY:**

None.

### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

#### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.

1 A bill to be entitled

2 An act relating to notification regarding the state  
3 minimum wage; providing definitions; requiring an employer  
4 to display posters at worksites to provide employees  
5 notice about the state minimum wage; requiring the Agency  
6 for Workforce Innovation to make available an updated  
7 poster each year; providing for the size and contents of  
8 the posters; providing an effective date.

9  
10 Be It Enacted by the Legislature of the State of Florida:

11  
12 Section 1. Notification of the state minimum wage.--

13 (1) As used in this section, the terms:

14 (a) "Employer," "employee," and "wage" have the meanings  
15 as established under the federal Fair Labor Standards Act and  
16 its implementing regulations.

17 (b) "Florida minimum wage" means the wage that an employer  
18 must, at a minimum, pay an employee pursuant to Section 24,  
19 Article X of the State Constitution and implementing law.

20 (2) Each employer who must pay an employee the Florida  
21 minimum wage shall prominently display a poster made available  
22 pursuant to subsection (3) in a conspicuous and accessible place  
23 at each worksite.

24 (3)(a) Each year the Agency for Workforce Innovation  
25 shall, on or before December 1, create and make available to  
26 employers a poster in English and in Spanish which reads  
27 substantially as follows:

NOTICE TO EMPLOYEES

The Florida minimum wage is \$ (amount) per hour and \$ (amount) per hour for tipped workers for January 1, (year), through December 31, (year).

The rate of the minimum wage is recalculated yearly on September 30, based on the Consumer Price Index. Every year on January 1 the new Florida minimum wage takes effect.

An employer may not retaliate against an employee for exercising his or her right to receive the minimum wage. Rights protected by the State Constitution include the right to:

1. File a complaint with the Agency for Workforce Innovation about an employer's alleged noncompliance with lawful minimum-wage requirements.

2. Inform any person about an employer's alleged noncompliance with lawful minimum-wage requirements.

3. Inform any person of his or her potential rights under Section 24, Article X of the State Constitution and to assist him or her in asserting such rights.

An employee who has not received the lawful minimum wage may bring a civil action in a court of law against an employer to recover back wages plus



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damages and attorney's fees.

An employer found liable for intentionally  
violating minimum-wage requirements is subject to a  
fine of \$1,000 per violation, payable to the state.

The Attorney General or other official designated  
by the Legislature may bring a civil action to enforce  
the minimum wage.

For details see Section 24, Article X of the  
State Constitution.

(b) The poster must be at least 12 inches in height by 16  
inches in width and in a format easily seen by employees. The  
letters in the poster must be of a conspicuous size. The letters  
in the first line must be larger than the letters of any other  
line and the letters of the first sentence must be in bold type  
and larger than the letters in the remaining lines.

Section 2. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. **HB 1211**

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

Council/Committee hearing bill: Economic Development, Trade &  
Banking Committee

Representative(s) Fields offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Section 448.109, Florida Statutes, is created to  
read:

448.109 Notification of the state minimum wage.--

(1) As used in this section, the terms:

(a) "Employer," "employee," and "wage" have the meanings  
as established under the federal Fair Labor Standards Act and  
its implementing regulations.

(b) "Florida minimum wage" means the wage that an employer  
must, at a minimum, pay an employee pursuant to Section 24,  
Article X of the State Constitution and implementing law.

(2) Each employer who must pay an employee the Florida  
minimum wage shall prominently display a poster substantially  
similar to the one made available pursuant to subsection (3) in  
a conspicuous and accessible place in every establishment where  
such employees are employed.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

(3)(a) Each year the Agency for Workforce Innovation shall, on or before December 1, create and make available to employers a poster in English and in Spanish which reads substantially as follows:

NOTICE TO EMPLOYEES

The Florida minimum wage is \$ (amount) per hour and \$ (amount) per hour for tipped workers for January 1, (year), through December 31, (year).

The rate of the minimum wage is recalculated yearly on September 30, based on the Consumer Price Index. Every year on January 1 the new Florida minimum wage takes effect.

An employer may not retaliate against an employee for exercising his or her right to receive the minimum wage. Rights protected by the State Constitution include the right to:

1. File a complaint about an employer's alleged noncompliance with lawful minimum-wage requirements.

2. Inform any person about an employer's alleged noncompliance with lawful minimum-wage requirements.

3. Inform any person of his or her potential rights under Section 24, Article X of the State Constitution and to assist him or her in asserting such rights.

An employee who has not received the lawful minimum wage after notifying his or her employer and

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

54 giving the employer 15 days to resolve any claims for  
55 unpaid wages may bring a civil action in a court of  
56 law against an employer to recover back wages plus  
57 damages and attorney's fees.

58  
59 An employer found liable for intentionally  
60 violating minimum-wage requirements is subject to a  
61 fine of \$1,000 per violation, payable to the state.

62  
63 The Attorney General or other official designated  
64 by the Legislature may bring a civil action to enforce  
65 the minimum wage.

66  
67 For details see Section 24, Article X of the  
68 State Constitution.

69  
70 (b) The poster must be at least 8.5 inches by 11 inches  
71 and in a format easily seen by employees. The text in the poster  
72 must be of a conspicuous size. The text in the first line must  
73 be larger than the text of any other line and the text of the  
74 first sentence must be in bold type and larger than the text in  
75 the remaining lines.

76 Section 2. This act shall take effect January 1, 2007.

77  
78  
79 ===== T I T L E A M E N D M E N T =====

80 Remove the entire title and insert:

81 A bill to be entitled

82 An act relating to notification regarding the state  
83 minimum wage; providing definitions; requiring an employer  
84 to display posters at worksites to provide employees

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

85 notice about the state minimum wage; requiring the Agency  
86 for Workforce Innovation to make available an updated  
87 poster each year; providing for the size and contents of  
88 the posters; providing an effective date.  
89



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1237 CS

Advanced Science and Technology Research

**SPONSOR(S):** Meador

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2084

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Colleges & Universities Committee	10 Y, 0 N, w/CS	Hatfield	Tilton
2) Economic Development, Trade & Banking Committee		Olmedillo	Carlson
3) Education Appropriations Committee			
4) Education Council			
5)			

### SUMMARY ANALYSIS

In a January 30, 2006 press release, the Governor launched new economic development initiatives to bolster the state's efforts to diversify and build Florida's Innovation Economy. To coincide with this initiative, the Governor is recommending a \$630 million investment in the 2006-2007 budget for programs that will generate the innovation needed to create the industries of the future; this includes \$200 million to create and fund the 21<sup>st</sup> Century Technology, Research and Scholarship Enhancement Act.

The bill creates the 21<sup>st</sup> Century Technology, Research, and Scholarship Enhancement Act (the Act). The Act provides for the creation of the Florida Technology, Research, and Scholarship Board (the board) within the Board of Governors (BOG) to guide the establishment of Centers of Excellence and the attraction of world class scholars. The board is charged with recommending criteria to the BOG for the 21<sup>st</sup> Century World Class Scholars Program and with providing guidance to the BOG regarding the implementation and administration of the Centers of Excellence. The Act expires June 30, 2011.

The bill provides for the allocation of state matching funds to attract World Class Scholars to state universities. The bill requires a state university to raise no less than \$1 million to be eligible for state matching funds to recruit a World Class Scholar. Funds raised will be eligible for a one-to-one match from the state. The bill prohibits revenues received from state appropriations, student tuition and fees, and state funded contracts or grants to be eligible for the state match.

The bill provides for the creation or expansion of Centers of Excellence. Applicants may include entities other than state universities; however, all applicants must submit and demonstrate coordination with one or more state universities in order to be eligible for funding. The bill requires the board to recommend to the BOG criteria for the approval of proposals to create or expand a center and provides guidelines for the criteria. The bill also requires the board to recommend to the BOG for approval and funding the proposals that meet the approved criteria.

The bill appropriates \$100 million to the 21<sup>st</sup> Century World Class Scholars Program, \$100 million to the Centers of Excellence Program, and \$399,437 to the BOG for the fiscal year 2006-2007 to implement the Act. See the FISCAL COMMENTS section for further details.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—The bill creates the Florida Technology, Research, and Scholarship Board (the board) within the Board of Governors (BOG), requires certain duties of the board, and requires the BOG to provide staff support and other support for the board.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

In 2002, the Governor proposed \$100 million for the creation of Centers of Excellence to increase technology research at state universities and diversify the state's economy by stimulating the high-tech economic job sector. Three Centers of Excellence were created: the Center of Excellence in Biomedical and Marine Biotechnology at Florida Atlantic University, the Florida Photonics Center of Excellence at the University of Central Florida, and the Center of Excellence in Regenerative Health Biotechnology at the University of Florida. The Legislature provided \$30 million for these Centers of Excellence in the 2002-2003 General Appropriations Act (GAA).<sup>1</sup>

According to the BOG, as of January 2006, the centers have leveraged the state's investment to achieve the following outcomes:

FISCAL PERFORMANCE MEASURES	FAU	UCF	UF	TOTAL
Amount Of:				
Initial State Funds Awarded	\$10,000,000	\$10,000,000	\$10,000,000	\$30,000,000
Venture Funding Attracted	\$0	\$10,500,000	\$0	\$10,500,000
Other State Grants and Funds Awarded	\$827,138	\$5,062,900	\$0	\$5,890,038
Federal Research Funds Awarded	\$18,789,389	\$15,970,187	\$3,250,000	\$38,009,576
Private Research Funds Awarded	\$3,157,859	\$8,952,539	\$10,000	\$12,120,398
Foundation Funds Invested	\$2,300,000	\$0	\$10,000,000	\$12,300,000
License Income Earned	\$5,500	\$181,250	\$0	\$186,750
<b>TOTAL</b>				<b>\$109,006,762</b>

<sup>1</sup> 2002-2003 General Appropriations Act, Specific Appropriation 173A.



In addition to their performance on fiscal measures, the centers report the following measures of research productivity:

<b>PRODUCTIVITY PERFORMANCE MEASURES<sup>2</sup></b>	<b>FAU</b>	<b>UCF</b>	<b>UF</b>	<b>TOTAL</b>
<b>Number Of:</b>				
Research Studies and Articles Published	55	138	125	318
Research Collaborations	27	29	2	58
K-20 Students and Teachers Served	2470	15	100	2585
Industry Internships Granted to Graduate Students	3	15	0	18
Patents Filed	21	40	0	61
Patents Issued	23	14	0	37
Technologies Licensed	3	3	0	6
Affiliated Companies	0	2	1	3
Start up Businesses	3	4	0	7
Out-of-State Businesses Contacted	31	34	5	70
Contacts with Venture Capitalists	14	10	3	27

In a January 30, 2006 press release, the Governor launched new economic development initiatives to bolster the state's efforts to diversify and build Florida's Innovation Economy. To coincide with this initiative, the Governor is recommending a \$630 million investment in the 2006-2007 budget for programs that will generate the innovation needed to create the industries of the future; this includes \$200 million to create and fund the 21<sup>st</sup> Century Technology, Research and Scholarship Enhancement Act.

- \$100 million is to be used to create and expand the Centers of Excellence around key sectors of the economy. According to the press release, this program would allow state universities and their research partners to leverage public and private dollars to build the infrastructure to support emerging research and development projects. The collaboration between industry and academia would help drive inventions and innovations from the lab to the marketplace.
- \$100 million is to be used to create the World Class Scholars Program. According to the press release, this program would give universities the financial resources to attract leading researchers from around the globe to Florida. Funds may be used for incentives, including building labs, providing high-tech equipment or funding support staff. The state would match the investment of universities dollar-for-dollar.

### **Effects of Proposed Changes**

The bill creates the 21<sup>st</sup> Century Technology, Research, and Scholarship Enhancement Act (the Act) and provides legislative findings and intent on why this is important for Florida.

The purpose of the Act is to:

- Invest in programs that attract world class scholars and build Centers of Excellence, both of which are important means of increasing technology-based business in this state.
- Require coinvestment as a means of leveraging state dollars.
- Align research and development efforts with established, statewide economic-development strategies, including an emphasis on identified economic clusters.
- Facilitate value-added job creation through continuous improvement in university research, as well as entrepreneurship and capital-development programs.
- Establish Florida as a leading state for entrepreneurship and innovation, with continued commitment to university centers and an expanding base of research and development.

The bill defines the following terms for purposes of the Act:

- “A 21<sup>st</sup> Century World Class Scholar” means a principle researcher/investigator who has high academic credentials, demonstrated competence, and experience that meets the requirements established by the board for a 21<sup>st</sup> Century World Class Scholar.
- “Applicant” means any state university, private university located in this state, or any private or public research center, community college, or training center in this state which coordinates with a state university for purposes of this act.
- “Board” means the Florida Technology, Research, and Scholarship Board.
- “Center of Excellence” means an organization of personnel, facilities, and equipment established at or in collaboration with one or more state universities to accomplish the purposes and objectives of this act.
- “Research center” means an institute, center, or clinic that includes research and development or education as a principal mission of the organization.
- “State university” means a Florida public university as defined in s. 1000.21, F.S.

### ***Florida Technology, Research, and Scholarship Board***

The bill creates the Florida Technology, Research, and Scholarship Board (the board) within the Board of Governors (BOG) to guide the establishment of centers and the attraction of world class scholars. The board consists of 11 members, seven of whom must be appointed by the Governor, two appointed by the President of the Senate, and two appointed by the Speaker of the House. The Governor’s appointees must include a member of the board of directors of Enterprise Florida, Inc., and a member of the BOG. Appointed members must be representative of business leaders, industrial researchers, academic researchers, scientists, and leaders in the emerging and advanced technology sector and may not serve more than four years. The chair of the board is appointed by the Governor.

The board members serve without compensation, but are entitled to reimbursement for per diem and travel expenses in accordance with s. 112.061, F.S. The BOG must provide support staff for the activities of the board and per diem and travel expenses for board members.

The board is charged with recommending to the BOG criteria for the 21<sup>st</sup> Century World Class Scholars Program and with providing guidance to the BOG regarding the implementation and administration of the Centers of Excellence Program. In addition, the board must recommend to the BOG the qualifications, standards, and requirements for approval of investments in Centers of Excellence. The bill provides that the board may form committees of its members and encourages the board to consult with certain research entities whose input may be helpful in determining the requirements and standards for the Centers of Excellence Program.

### ***21<sup>st</sup> Century World Class Scholars Program***

The bill provides for the allocation of state matching funds to attract World Class Scholars to state universities. The bill requires the World Class Scholars Program to be used as a tool to develop the state’s capabilities in science and high-technology research, emphasizing Florida’s identified strengths in science and technology while also recognizing new technologies as they may emerge.

The bill requires the board to consult with certain state university officials, the Office of Tourism, Trade, and Economic Development, the board of directors of Enterprise Florida, Inc., and leading members of the private industry, to develop and recommend to the BOG the criteria for the World Class Scholars Program. The criteria recommended to the BOG must address, at a minimum:

- The presence of distinguished faculty members, outstanding students, and adequate research and scholarly support services.
- The existence of an academic environment having appropriate infrastructure
- The demonstration of concordance with Florida’s strategic plan for economic development or an emphasis on one or more emerging sciences or technologies that could favorably impact the state’s economic future.

The bill requires a state university to raise no less than \$1 million to be eligible for state matching funds to recruit a World Class Scholar. Funds raised will be eligible for a one-to-one match from the state. The bill prohibits revenues received from state appropriations, student tuition and fees, and state funded contracts or grants to be eligible for the state match. Upon verification by the BOG that a state university has met the criteria for a World Class Scholar, the BOG must release matching funds to the university. The bill requires funds to be used for the purpose of recruiting a World Class Scholar. Funds must also be expended according to an expenditure plan approved by the BOG.

The bill provides that the Act does not replace or obviate existing programs.

### ***Centers of Excellence***

The bill also specifies the purposes and objectives of Centers of Excellence, which include recruiting and retaining world class scholars. The bill requires the board to recommend to the BOG criteria for approving proposals to create or expand Centers of Excellence and provides certain factors that must be considered.

The bill requires the board to periodically solicit proposals for Centers of Excellence. Applicants may include entities other than state universities; however, all applicants must submit and demonstrate coordination with one or more state universities in order to be eligible for funding. The board must notify the president of each state university and applicable research centers in this state of the call for proposals.

The board must recommend to the BOG for approval and funding the proposals that meet the approved criteria. If no program is judged worthy of approval during a solicitation cycle, an approval does not have to be made. The bill provides that the Act does not establish a limit for an investment amount; however, any approval for a single center exceeding \$20 million must be documented to have superior prospects for success in its field of research and offer outstanding opportunities to leverage state dollars.

The bill requires a Center of Excellence that receives funding under the Act to provide at least annual reports to the board and the BOG concerning its achievement of objectives as identified in the approved proposal.

### ***Other Provisions***

The BOG is required to issue an annual report by December 31 of each year that provides information relating to the World Class Scholars Program and the created or expanded Centers of Excellence. The annual BOG report must be presented to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must include a copy of an independent audit of the board and a review of the progress of the programs established pursuant to the Act.

The Act expires June 30, 2011.

The bill appropriates \$100 million to the 21<sup>st</sup> Century World Class Scholars Program, \$100 million to the Centers of Excellence Program, and \$399,437 to the BOG for the fiscal year 2006-2007 to implement this Act. See the FISCAL COMMENTS section for further details.

The bill provides an effective date of July 1, 2006.

## **C. SECTION DIRECTORY:**

**Section 1:** Creates s. 1004.226, F.S., the 21<sup>st</sup> Century Technology, Research, and Scholarship Enhancement Act; providing legislative findings and intent; providing definitions; creating the Florida Technology, Research, and Scholarship Board within the Board of Governors; providing for members of the board and terms; providing for board members to be reimbursed for per diem and expenses incurred in the performance of their duties; requiring that the Board of Governors provide staff support and other support for the board; requiring that the board provide recommendations for the 21<sup>st</sup> Century

World Class Scholars Program and the Centers of Excellence Program; authorizing the board to form committees and consult with certain other entities; providing for the 21<sup>st</sup> Century World Class Scholar Program to provide matching funds to state universities; providing guidelines for the board in the development of criteria for recommendation to the Board of Governors; requiring a minimum investment of funds; specifying the purposes of the Centers of Excellence; requiring the board to recommend to the Board of Governors criteria for approving proposals to create or expand a Center of Excellence, to solicit proposals, and to recommend proposals that meet such criteria; requiring documentation if funds are approved for a Center of Excellence in excess of a specified amount; requiring reports by Centers of Excellence and the Board of Governors; and providing for the expiration of the act.

**Section 2:** Appropriates \$200 million from nonrecurring general revenue for the 2006-2007 fiscal year to the Board of Governors, of which \$100 million is allocated for the 21<sup>st</sup> Century World Class Scholars Program and \$100 million for the Centers of Excellence Program; and provides for carrying forward certain unexpended balances.

**Section 3:** Appropriates certain sums of money and full-time positions to the Board of Governors for the 2006-2007 fiscal year, for the purpose of administering this act.

**Section 4:** Provides an effective date of July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

See FISCAL COMMENTS.

#### **2. Expenditures:**

See FISCAL COMMENTS.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The bill does not appear to have a fiscal impact on local government revenues.

#### **2. Expenditures:**

The bill does not appear to have a fiscal impact on local government expenditures.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill provides for the establishment of the 21<sup>st</sup> Century World Class Scholars Program and the creation or expansion of Centers of Excellence. These programs may increase the economic development in this state which in turn may provide for additional employment opportunities for Florida citizens.

### **D. FISCAL COMMENTS:**

For the fiscal year 2006-2007, the bill appropriates a total of \$200 million from nonrecurring general revenue to the BOG, of which \$100 million must be allocated for the 21<sup>st</sup> Century World Class Scholars Program and \$100 million for the Centers of Excellence Program. The bill requires any unexpended balance from this appropriation to be carried forward at the end of each fiscal year until the 2010-2011 fiscal year. At the end of the 2010-2011 fiscal year, any remaining balance that has not been distributed by the BOG must revert unallocated to the General Revenue Fund.

The bill also appropriates a total of \$399,437 and two full-time equivalent positions to the BOG for the 2006-2007 fiscal year for the purpose of administering this Act. The total appropriation provides for the following:

- Two full-time equivalent positions and \$130,000 in approved annual salary rate.
- The sum of \$162,959 from recurring general revenue funds for salaries and benefits.
- The sum of \$101,892 from recurring general revenue funds for expenses.
- The sum of \$3,800 from nonrecurring general revenue funds for operating capital outlay.
- The sum of \$786 from recurring general revenue funds for transfer to the Department of Management Services for the Human Resources Services Statewide Contract.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

The bill does not require a municipality or county to spend funds or to take any action requiring the expenditure of funds.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

None.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

On March 14, 2006, the Colleges and Universities Committee adopted an amendment to HB 1237. The bill was reported favorably with a Committee Substitute (CS). The CS differs from the original bill in the following ways:

- Removes the endowment language.
- Prohibits revenues received from student tuition and fees and state funded contracts or grants from being eligible for a state match.
- Requires funds to be expended according to an expenditure plan approved by the BOG.
- Changes the dates funds are to be carried forward and reverted from 2009-2010 to 2010-2011.

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CHAMBER ACTION

The Colleges & Universities Committee recommends the following:

**Council/Committee Substitute**

Remove the entire bill and insert:

A bill to be entitled

An act relating to advanced science and technology research; creating s. 1004.226, F.S.; creating the 21st Century Technology, Research, and Scholarship Enhancement Act; providing legislative findings and intent; providing definitions; creating the Florida Technology, Research, and Scholarship Board within the Board of Governors of the State University System; providing for members of the board; providing for terms; providing for board members to be reimbursed for per diem and expenses incurred in the performance of their duties; requiring that the Board of Governors of the State University System provide staff support and other support for the board; requiring that the board provide recommendations for the 21st Century World Class Scholars Program and the Centers of Excellence Program; authorizing the board to form committees and consult with certain other entities; providing for the 21st Century World Class Scholars Program to provide matching funds to state universities; providing guidelines

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for the board in the development of criteria for recommendation to the Board of Governors; requiring a minimum investment of funds; specifying the purposes of the Centers of Excellence; requiring the board to recommend to the Board of Governors criteria for approving proposals to create or expand a Center of Excellence, to solicit proposals, and to recommend proposals that meet such criteria; requiring documentation if funds are approved for a Center of Excellence in excess of a specified amount; requiring reports by Centers of Excellence and the Board of Governors; providing for expiration of the act; providing appropriations and authorizing positions; providing for carrying forward certain unexpended balances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1004.226, Florida Statutes, is created to read:

1004.226 The 21st Century Technology, Research, and Scholarship Enhancement Act.--

(1) LEGISLATIVE FINDINGS AND INTENT.--

(a) The Legislature finds that diversifying this state's economy requires a focus on building a growing base of high-wage jobs and on nurturing those technologies and clusters that will be the foundation of Florida's growing economic diversity and prosperity.

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51           **(b) The Legislature further finds that special programs**  
52 **are needed to facilitate the recruitment of exceptional talent**  
53 **to Florida's research universities and centers and to provide**  
54 **the infrastructure and resources that precipitate joint efforts**  
55 **and coinvestment among state research and development**  
56 **institutions, private industry, and government. Florida needs**  
57 **consistent commitment and investment in order to further the**  
58 **state's strategy of capitalizing on innovative research and**  
59 **development to build a thriving, technology-rich economy.**

60           **(2) CREATION.--The 21st Century Technology, Research, and**  
61 **Scholarship Enhancement Act is created for the purpose of:**

62           **(a) Investing in programs that attract world class**  
63 **scholars and building Centers of Excellence as an important**  
64 **means of increasing technology-based business in this state;**

65           **(b) Requiring coinvestment as a means of leveraging state**  
66 **dollars;**

67           **(c) Aligning research and development efforts with**  
68 **established, statewide economic-development strategies,**  
69 **including an emphasis on identified economic clusters;**

70           **(d) Facilitating value-added job creation through**  
71 **continuous improvement in university research, as well as**  
72 **entrepreneurship and capital-development programs; and**

73           **(e) Establishing Florida as a leading state for**  
74 **entrepreneurship and innovation, with continued commitment to**  
75 **university Centers of Excellence and an expanding base of**  
76 **research and development.**

77           **(3) DEFINITIONS.--As used in this section, the term:**



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78        (a) "A 21st Century World Class Scholar" means a principal  
79 researcher/investigator who has high academic credentials,  
80 demonstrated competence, and experience that meets the  
81 requirements established by the board for a 21st Century World  
82 Class Scholar.

83        (b) "Applicant" means any state university, private  
84 university located in this state, or any private or public  
85 research center, community college, or training center in this  
86 state that coordinates with a state university for purposes of  
87 this act.

88        (c) "Board" means the Florida Technology, Research, and  
89 Scholarship Board.

90        (d) "Center of Excellence" means an organization of  
91 personnel, facilities, and equipment established at or in  
92 collaboration with one or more state universities to accomplish  
93 the purposes and objectives of this act.

94        (e) "Research center" means an institute, center, or  
95 clinic that includes research and development or education as a  
96 principal mission of the organization.

97        (f) "State university" means a Florida public university  
98 as defined in s. 1000.21.

99        (4) FLORIDA TECHNOLOGY, RESEARCH, AND SCHOLARSHIP  
100 BOARD.--The Florida Technology, Research, and Scholarship Board  
101 is created within the Board of Governors of the State University  
102 System to guide the establishment of Centers of Excellence and  
103 the attraction of world class scholars.

104        (a) The board shall consist of 11 members. Seven members  
105 shall be appointed by the Governor, one of whom the Governor

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106 shall appoint as chair of the board, one of whom must be a  
107 member of the board of directors of Enterprise Florida, Inc.,  
108 and one of whom must be a member of the Board of Governors of  
109 the State University System. Two members shall be appointed by  
110 the President of the Senate and two members shall be appointed  
111 by the Speaker of the House of Representatives. Appointed  
112 members must be representative of business leaders, industrial  
113 researchers, academic researchers, scientists, and leaders in  
114 the emerging and advanced technology sector. Appointed members  
115 may not serve for more than 4 years and any vacancy that occurs  
116 during these appointees' terms shall be filled in the same  
117 manner as the original appointment. A majority of members  
118 constitutes a quorum.

119 (b) Members of the board shall serve without compensation,  
120 but are entitled to receive reimbursement for per diem and  
121 travel expenses in accordance with s. 112.061 while in the  
122 performance of their duties.

123 (c) The Board of Governors shall provide staff support for  
124 the activities of the board and per diem and travel expenses for  
125 board members.

126 (d) The board is charged with recommending criteria to the  
127 Board of Governors for the 21st Century World Class Scholars  
128 Program and with providing guidance to the Board of Governors  
129 regarding the implementation and administration of the Centers  
130 of Excellence Program. The board shall recommend to the Board of  
131 Governors the qualifications, standards, and requirements for  
132 approval of investments in Centers of Excellence under this act.  
133 The board may form committees of its members and is encouraged

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134 to consult with Enterprise Florida, Inc., the Florida Research  
135 Consortium, Bio-Florida, IT Florida, the Florida Aviation and  
136 Aerospace Alliance, and any other entity whose input may be  
137 helpful in determining the requirements and standards for the  
138 program.

139 (5) THE 21ST CENTURY WORLD CLASS SCHOLARS PROGRAM.--

140 (a) This act allocates state matching funds to attract  
141 21st Century World Class Scholars to state universities.

142 (b) The 21st Century World Class Scholars Program shall be  
143 used as a tool to develop the state's capabilities in science  
144 and high-technology research, emphasizing Florida's identified  
145 strengths in science and technology while also recognizing new  
146 technologies as they may emerge.

147 (c) The board, in consultation with senior administrators  
148 of state universities, state university foundation directors,  
149 the Office of Tourism, Trade, and Economic Development, the  
150 board of directors of Enterprise Florida, Inc., and leading  
151 members of private industry, shall develop and recommend to the  
152 Board of Governors criteria for the 21st Century World Class  
153 Scholars Program. Such criteria shall address, at a minimum, the  
154 following:

155 1. The presence of distinguished faculty members,  
156 including whether the university has a substantial history of  
157 external funding, along with the strong potential for attracting  
158 a scholar of national or international eminence.

159 2. The presence of academically outstanding students,  
160 along with the promise and potential for attracting additional  
161 highly qualified students.

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162        3. The presence of adequate research and scholarly support  
163 services.

164        4. The existence of an academic environment having  
165 appropriate infrastructure, including buildings, classrooms,  
166 libraries, laboratories, and specialized equipment, that is  
167 conducive to the conduct of the highest quality of scholarship  
168 and research.

169        5. The demonstration of concordance with Florida's  
170 strategic plan for economic development or an emphasis on one or  
171 more emerging sciences or technologies that could favorably  
172 impact the state's economic future.

173        (d) A state university must raise a minimum of \$1 million  
174 to be eligible for state matching funds to recruit a 21st  
175 Century World Class Scholar. Funds raised by the university  
176 shall be eligible for a one-to-one match from the state.  
177 Revenues received from state appropriations, student tuition and  
178 fees, and state-funded contracts or grants are not eligible for  
179 state match.

180        (e) Upon the verification by the Board of Governors that a  
181 state university has met the criteria for a 21st Century World  
182 Class Scholar, the Board of Governors shall release matching  
183 funds to the university. Funds shall be used for the purpose of  
184 recruiting a 21st Century World Class Scholar and shall be  
185 expended according to an expenditure plan approved by the Board  
186 of Governors.

187        (f) Nothing in this act is intended to replace or obviate  
188 existing programs.

189        (6) CENTERS OF EXCELLENCE.--

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(a) The purposes and objectives of a Center of Excellence include:

1. Identifying and pursuing opportunities for university scholars, research center scientists and engineers, and private businesses to form collaborative partnerships to foster and promote the research required to develop commercially promising, advanced, and innovative science and technology and to transfer those discoveries to commercial sectors.

2. Acquiring and leveraging public-sector and private-sector funding to provide the totality of funds, personnel, facilities, equipment, and other resources needed to support the research required to develop commercially promising, advanced, and innovative science and technology and to transfer those discoveries to commercial sectors.

3. Recruiting and retaining world class scholars, high-performing students, and leading scientists and engineers in technology disciplines to engage in research in this state and to develop commercially promising, advanced, and innovative science and technology.

4. Enhancing and expanding science and technology curricula and laboratory resources at universities and research centers in this state.

5. Increasing the number of high-performing students in science and technology disciplines who graduate from universities in this state and pursue careers in this state.

6. Stimulating and supporting the inception, growth, and diversification of science and technology-based businesses and

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ventures in Florida and increasing employment opportunities for the workforce needed to support such businesses.

(b) The board shall recommend to the Board of Governors criteria for approving proposals to create or expand a Center of Excellence. Such criteria shall consider:

1. The maturity of the applicant's existing programs relating to a proposed Center of Excellence.

2. The comprehensiveness and effectiveness of site plans relating to a proposed Center of Excellence.

3. The existing amount of the applicant's resources dedicated to activities relating to a proposed Center of Excellence.

4. The regional economic structure and climate.

5. The degree to which the applicant identifies and seizes opportunities to collaborate with other public or private entities for research purposes.

6. The presence of a comprehensive performance and accountability measurement system.

7. The use of an integrated research and development strategy using multiple levels of the educational system.

8. The ability of the applicant to raise research funds and leverage public and private investment dollars to support advanced and emerging scientific and technological research and development projects.

9. The degree to which the applicant transfers advanced and emerging sciences and technologies from its laboratories to the commercial sector.

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244        10. The degree to which the applicant stimulates and  
245 supports the creation of new ventures.

246        11. The existence of a plan to enhance academic curricula  
247 by improving communication between academia and industry.

248        12. The existence of a plan to increase the number,  
249 quality, and retention rate of faculty and graduate students in  
250 advancing and emerging science and technology-based disciplines.

251        13. The existence of a plan to increase the likelihood of  
252 faculty and graduate students pursuing private-sector careers in  
253 the state.

254        14. The ability of the applicant to provide capital  
255 facilities necessary to support research and development.

256        (c) The board shall periodically solicit proposals for  
257 Centers of Excellence. The board may issue broad solicitations  
258 for applicants to establish a Center of Excellence, including  
259 entities other than state universities. All applicants must  
260 submit and demonstrate coordination with one or more state  
261 universities in order to be eligible for funding. The board may  
262 solicit proposals for a more defined Center of Excellence that  
263 is intended to meet identified needs or capitalize on perceived  
264 technology and research opportunities. The board shall notify  
265 the president of each state university and applicable research  
266 centers in this state of the call for proposals.

267        (d) The board shall recommend to the Board of Governors  
268 for approval and funding those proposals that meet the criteria  
269 approved by the Board of Governors.

270        (e) If no proposal is judged worthy of approval during a  
271 solicitation cycle, an approval need not be made. This act does

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272 not establish a limit for an investment amount; however, any  
273 approval for a single Center of Excellence exceeding \$20 million  
274 must be documented to have superior prospects for success in its  
275 field of research and offer outstanding opportunities to  
276 leverage state dollars.

277 (7) ANNUAL REPORT.--

278 (a) Any Center of Excellence receiving funding pursuant to  
279 this section shall provide at least annual reports to the board  
280 and the Board of Governors concerning its achievement of  
281 objectives as identified and presented in the approved proposal.

282 (b) The Board of Governors shall issue an annual report by  
283 December 31 each year of the activities conducted, including the  
284 accomplishments and overall economic benefits to the state, the  
285 number of 21st Century World Class Scholars attracted, the  
286 number of Centers of Excellence created or expanded, the success  
287 of collaborations with related industries, and the success of  
288 these programs. The annual report shall be presented to the  
289 Governor, the President of the Senate, and the Speaker of the  
290 House of Representatives. The annual report must include a copy  
291 of an independent audit of the board and a review of the  
292 progress of programs established pursuant to this section.

293 (8) EXPIRATION.--This section shall expire June 30, 2011.

294 Section 2. For the 2006-2007 fiscal year, the sum of \$200  
295 million is appropriated from nonrecurring general revenue to the  
296 Board of Governors of the State University System, of which \$100  
297 million shall be allocated for the 21st Century World Class  
298 Scholars Program and \$100 million for the Centers of Excellence  
299 Program. Notwithstanding s. 216.301, Florida Statutes, and



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pursuant to s. 216.351, Florida Statutes, any unexpended balance  
from this appropriation shall be carried forward at the end of  
each fiscal year until the 2010-2011 fiscal year. At the end of  
the 2010-2011 fiscal year, any remaining balance of this  
appropriation that has not been disbursed by the Board of  
Governors shall revert unallocated to the General Revenue Fund.

Section 3. The following sums of money and full-time  
equivalent positions are appropriated to the Board of Governors  
of the State University System for the 2006-2007 fiscal year for  
the purpose of administering this act:

(1) Two full-time equivalent positions and 130,000 in  
approved annual salary rate;

(2) The sum of \$162,959 from recurring general revenue  
funds for salaries and benefits;

(3) The sum of \$101,892 from recurring general revenue  
funds for expenses;

(4) The sum of \$3,800 from nonrecurring general revenue  
funds for operating capital outlay; and

(5) The sum of \$786 from recurring general revenue funds  
for transfer to the Department of Management Services for the  
Human Resource Services Statewide Contract.

Section 4. This act shall take effect July 1, 2006.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1595

State Incentives in Enterprise Zones

**SPONSOR(S):** Jennings

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1912

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade &amp; Banking Committee</u>		<u>Carlson</u>	<u>Carlson</u> <i>MNC</i>
2) <u>Finance &amp; Tax Committee</u>			
3) <u>Commerce Council</u>			
4) _____			
5) _____			

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### SUMMARY ANALYSIS

HB 1595 allows an eligible business located in an enterprise zone to transfer any unused enterprise zone jobs credits against the sales and use or corporate income taxes, in whole or in units of 25 percent, to another entity that may use the credits subject to the requirements of law.

The bill has an estimated fiscal impact on state revenue of (\$3.3m) in FY 2006-07 and (\$4.9m) in FY 2007-08.

The bill has an effective date of July 1, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Lower Taxes – The bill will allow a business to avail itself of a tax credit against the corporate income tax or sales and use tax, lowering its tax liability.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation:**

##### **Florida Enterprise Zone Program**

The Florida Enterprise Zone Act (act), codified in ss. 290.001-290.016, F.S., was created:

to provide the necessary means to assist local communities, their residents, and the private sector in creating the proper economic and social environment to induce the investment of private resources in productive business enterprises located in severely distressed areas and to provide jobs for residents of such areas.<sup>1</sup>

The Florida Enterprise Zone Act of 1994 was scheduled to be repealed on December 31, 2005, but was re-enacted as the Florida Enterprise Zone Act (act) by ch. 2005-287, L.O.F., for an additional ten years, and is now scheduled to be repealed December 31, 2015.

Under the act, areas of the state meeting specified criteria, including suffering from pervasive poverty, unemployment, and general distress, have been designated as enterprise zones. The act established a process for the nomination and designation of a maximum of 20 enterprise zones in 1994.<sup>2</sup> Subsequently, the Legislature has designated additional zones. Currently, there are 55 enterprise zones in the state. When the Enterprise Zone Act was re-enacted by ch. 2005-287, L.O.F., the 53 existing enterprise zones were allowed to apply for re-designation; 51 of 53 have been re-designated. Four of the 55 enterprise zones were created by ch. 2005-244, L.O.F.: City of Lakeland, Indian River County, Sumter County, and Orange County. There are also three Federal Enterprise Communities and two Federal Empowerment Zones. Certain federal, state, and local incentives are authorized to induce private businesses to invest in these enterprise zones.

##### **State Incentives**

The program's incentives are as follows:

- Jobs credit against sales or corporate income taxes: In order to be eligible, businesses must increase the number of full time jobs. The credit amount varies based on job location and wage of employee.<sup>3</sup>
- Property tax credit: New, expanded, or rebuilt businesses located within an enterprise zone are allowed a credit on their Florida corporate income tax based on the amount of property taxes paid.<sup>4</sup>
- Sales tax refund for building materials: A refund is available for sales taxes paid on the purchase of building materials used in the rehabilitation of real property in an enterprise zone. The amount of the refund is the lesser of 97 percent of the sales taxes paid or \$5,000, or, if 20

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<sup>1</sup> Section 290.003, F.S.

<sup>2</sup> Sections 290.0055 and 290.0065, F.S.

<sup>3</sup> Sections 212.096 and 220.181, F.S.

<sup>4</sup> Section 220.182, F.S.

percent or more of the business's employees reside in an enterprise zone, the lesser of 97 percent of the sales taxes paid or \$10,000.<sup>5</sup>

- Sales tax refund for business property used in an enterprise zone: A refund is available for sales taxes paid on the purchase of business property with a purchase price of \$5,000 or more purchased by and for use in a business located in an enterprise zone. The amount of the refund is the lesser of 97 percent of the sales taxes paid or \$5,000, or, if 20 percent or more of the business's employees reside in an enterprise zone, the lesser of 97 percent of the sales taxes paid or \$10,000.<sup>6</sup>

### **Local Incentives**

The following are examples of local incentives:

- Sales tax exemption for electrical energy used in an enterprise zone: A sales tax exemption (state and local taxes) is available to qualified businesses located in an enterprise zone on the purchase of electrical energy. This exemption is only available if the municipality in which the business is located has passed an ordinance to exempt the municipal utility taxes on such business.<sup>7</sup>
- Economic development ad valorem tax exemption: Up to 100 percent of the assessed value of improvements to real or tangible property of a new or expanded business located in an enterprise zone may be exempted from property taxes if the voters of a municipality authorize the governing body of the municipality to grant such exemptions.<sup>8</sup>
- Occupational license tax exemption: By ordinance, the governing body of a municipality may exempt 50 percent of the occupational license tax for businesses located in an enterprise zone.<sup>9</sup>
- Local impact fee abatement or reduction, or low-interest or interest-free loans, or grants to businesses.<sup>10</sup>

### **State Agencies**

The Governor's Office of Tourism, Trade, and Economic Development (OTTED) administers the Florida Enterprise Zone Act; the Department of Revenue (DOR) reviews and approves or denies a business's application for enterprise zone tax credits; and Enterprise Florida, Inc., is responsible for marketing the act.

### **Transfer of Unused Credits under the Brownfields Act<sup>11</sup>**

An unused tax credit authorized under ss. 199.1055 or 376.30781, F.S., available for the entity that rehabilitates a brownfield site may be transferred to the surviving entity of a merger or acquisition in whole or in units of not less than 25 percent and remains subject to the limitations of the law providing the tax credits. The credits may not be subsequently transferred again but succeed to a surviving or acquiring entity subject to the law providing the tax credits.

### **Calculation of Jobs Credit Against Sales and Use or Corporate Income Tax**

A business located in an enterprise zone and meeting the eligibility requirements of s. 212.096, F.S., may receive the following tax credits against the sales and use tax for the creation of new jobs:

- Twenty percent of the actual monthly wages paid to a new employee when a new job has been created for a business located in an enterprise zone;
- Thirty percent of the actual monthly wages paid to a new employee when a new job has been created for a business located in a rural enterprise zone;
- Thirty percent of the actual monthly wages paid to a new employee when a new job has been created for a business located in an enterprise zone if at least 20 percent of the employees are residents of the enterprise zone;

<sup>5</sup> Section 212.08(5)(g), F.S.

<sup>6</sup> Section 212.08(5)(h), F.S.

<sup>7</sup> Sections 212.08(15) and 166.231(8), F.S.

<sup>8</sup> Section 196.1995, F.S.

<sup>9</sup> Section 205.054, F.S.

<sup>10</sup> Section 290.0057(1)(e), F.S.

<sup>11</sup> Sections 376.77-376.85, F.S.

- Forty-five percent of the actual monthly wages paid to a new employee when a new job has been created for a business located in a rural enterprise zone if at least 20 percent of the employees are residents of the enterprise zone; and
- If the new employee is in a welfare transition program, 40 percent for \$4 above the hourly federal minimum wage rate; 41 percent for \$5 above the federal minimum wage rate; 42 percent for \$6 above the federal minimum wage rate; 43 percent for \$7 above the federal minimum wage rate; and 44 percent for \$8 above the federal minimum wage rate.

A business located in an enterprise zone and meeting the eligibility requirements of s. 220.181, F.S., may receive the following tax credits against the corporate income tax for the creation of new jobs:

- Twenty percent of the actual monthly wages paid to a new employee when a new job has been created for a business located in an enterprise zone;
- Thirty percent of the actual monthly wages paid to a new employee when a new job has been created for a business located in a rural enterprise zone;
- Thirty percent of the actual monthly wages paid to a new employee when a new job has been created for a business located in an enterprise zone if at least 20 percent of the employees are residents of the enterprise zone;
- Forty-five percent of the actual monthly wages paid to a new employee, for up to 24 consecutive months, when a new job has been created for a business located in a rural enterprise zone if at least 20 percent of the employees are residents of the enterprise zone; and
- If the new employee is in a welfare transition program, 40 percent for \$4 above the hourly federal minimum wage rate; 41 percent for \$5 above the federal minimum wage rate; 42 percent for \$6 above the federal minimum wage rate; 43 percent for \$7 above the federal minimum wage rate; and 44 percent for \$8 above the federal minimum wage rate.

### **Effect of Proposed Changes:**

The bill allows a business located in an enterprise zone that is eligible for jobs tax credits against the sales and use or corporate income taxes to transfer any unused jobs credits in whole or in units of not less than 25 percent to another entity. The transfer does not need to be associated with the merger or acquisition of the entity eligible for the credits.

The acquiring entity may use the credits subject to the requirements of ss. 212.096 (jobs credit against sales and use tax) or 220.181 (jobs credit against corporate income tax), F.S. Credits may only be transferred once but succeed to a surviving or acquiring entity.

### **C. SECTION DIRECTORY:**

Section 1. Creates s. 290.007(9), F.S., authorizing the transfer of unused tax credits.

Section 2. Provides an effective date of July 1, 2006.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues: The Revenue Estimating Conference met on March 17 and made the following estimated impact of the bill on state revenue:

FY 06-07	FY 07-08
(\$3.3m)	(\$4.9m)

2. Expenditures: None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues: None.

2. Expenditures: None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

**D. FISCAL COMMENTS:** None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

2. Other: None.

**B. RULE-MAKING AUTHORITY:** None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

- It appears that the intention of the sponsor is to limit application of the transfer of unused credits to the jobs tax credits against the corporate income and sale and use taxes. Line 14 of the bill could be clarified to reflect this limitation by replacing the term "any" with a reference to the controlling statutes (ss. 212.096 and 220.181, F.S.).
- In addition, the bill does not provide the Department of Revenue with rulemaking authority.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

HB 1595

2006

A bill to be entitled  
An act relating to state incentives in enterprise zones;  
amending s. 290.007, F.S.; authorizing eligible businesses  
to transfer unused credits; providing requirements and  
limitations; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (9) is added to section 290.007,  
Florida Statutes, to read:

290.007 State incentives available in enterprise  
zones.--The following incentives are provided by the state to  
encourage the revitalization of enterprise zones:

(9) An eligible business may transfer any unused credit in  
whole or in units of no less than 25 percent of the remaining  
credit. The entity acquiring such credit may use the credit in  
the same manner and with the same limitation as described in ss.  
212.096 and 220.181. Such transferred credits may not be  
transferred again but may succeed to a surviving or acquiring  
entity subject to the same conditions and limitations described  
in this section.

Section 2. This act shall take effect July 1, 2006.



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. 1595

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Economic Development, Trade and  
2 Banking

3 Representative(s) Jennings offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7  
8 Section 1. New subsection (11) of section 212.096, Florida  
9 Statutes, is created and subsequent subsections are renumbered  
10 to read:

11 212.096 Sales, rental, storage, use tax; enterprise zone  
12 jobs credit against sales tax.--

13 (11) The department may adopt rules governing the manner  
14 and form of transfers of credits under s. 290.007(9).

15 (12) ~~(11)~~ Any person who fraudulently claims this credit  
16 is liable for repayment of the credit plus a mandatory penalty  
17 of 100 percent of the credit plus interest at the rate provided  
18 in this chapter, and such person is guilty of a misdemeanor of  
19 the second degree, punishable as provided in s. 775.082 or s.  
20 775.083.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

21        (13) ~~(12)~~ This section, except for subsection ~~(11)~~ (12),  
22 expires on the date specified in s. 290.016 for the expiration  
23 of the Florida Enterprise Zone Act.

24        Section 2. New subsection (9) of section 220.181, Florida  
25 Statutes, is created, and subsequent subsections are renumbered  
26 to read:

27        220.181 Enterprise zone jobs credit.--

28        (9) The department may adopt rules governing the manner  
29 and form of transfers of credits under s. 290.007(9).

30        (10) ~~(9)~~ This section, except paragraph (1)(c) and  
31 subsection (8), expires on the date specified in s. 290.016 for  
32 the expiration of the Florida Enterprise Zone Act, and a  
33 business may not begin claiming the enterprise zone jobs credit  
34 after that date; however, the expiration of this section does  
35 not affect the operation of any credit for which a business has  
36 qualified under this section before that date, or any  
37 carryforward of unused credit amounts as provided in paragraph  
38 (1)(c).

39        Section 3. New subsection (9) of section 290.007, Florida  
40 Statutes, is created to read:

41        290.007 State incentives available in enterprise  
42 zones.--The following incentives are provided by the state to  
43 encourage the revitalization of enterprise zones:

44        (9) An eligible business located in a rural enterprise  
45 zone may transfer any unused credit under ss. 212.096 or 220.181  
46 in whole or in units of no less than 25 percent of the remaining  
47 credit. The entity acquiring such credit may use the credit in  
48 the same manner and with the same limitation as described in ss.  
49 212.096 and 220.181. Such transferred credits may not be  
50 transferred again but may succeed to a surviving or acquiring

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entity subject to the same conditions and limitations described  
in ss.212.096 and 220.181.

Section 4. This act shall take effect July 1, 2006.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

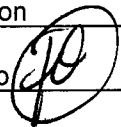

A bill to be entitled

An act relating to state incentives in enterprise zones;  
amending s. 212.096, F.S.; providing rulemaking authority  
to the Department of Revenue regarding the transfer of  
unused enterprise zone jobs credits; amending s. 220.181,  
F.S.; providing rulemaking authority to the Department of  
Revenue regarding the transfer of unused enterprise zone  
jobs credits; amending s. 290.007, F.S.; authorizing  
certain eligible businesses to transfer unused enterprise  
zone jobs credits; providing requirements and limitations;  
providing an effective date.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7061      PCB GO 06-19      OGSR Database for Deferred Presentment Providers  
**SPONSOR(S):** Governmental Operations Committee, Rivera  
**TIED BILLS:**                      **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Governmental Operations Committee	6 Y, 0 N	Williamson	Williamson
1) Economic Development, Trade & Banking Committee		Olmedillo 	Carlson 
2) State Administration Council			
3) _____			
4) _____			
5) _____			

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public records and each public meetings exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

The bill reenacts the public records exemption for personal identifying information contained in the database for deferred presentment providers. The exemption will repeal on October 2, 2006, if this bill does not become law.

The bill may have a minimal non-recurring positive fiscal impact on state government. The bill does not appear to have a fiscal impact on local government.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h7061a.EDTB.doc  
**DATE:** 3/14/2006

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

The Deferred Presentment Act,<sup>1</sup> which was enacted in 2001, provides requirements that apply to check cashing operations. Any person engaged in a deferred presentment transaction (deferred presentment provider<sup>2</sup>) must register with the Office of Financial Regulation (OFR) and is subject to its regulation.<sup>3</sup>

The maximum face amount of a check taken for deferred presentment cannot exceed \$500, excluding allowable fees.<sup>4</sup> The maximum fee is 10 percent of the face amount, plus a maximum \$5.00 verification fee.<sup>5</sup> Upon receipt of the customer's (drawer<sup>6</sup>) check, the deferred presentment provider must immediately provide the drawer with the amount of the check, minus the allowable fees. The deferred presentment agreement may not be for a term in excess of 31 days or less than seven days.<sup>7</sup> The provider cannot renew or extend any transaction (rollover) or hold more than one outstanding check for any one drawer at any one time.<sup>8</sup>

A deferred presentment provider cannot enter into a transaction with a person who has an outstanding transaction with any other provider, or with a person whose previous transaction with any provider was terminated for less than 24 hours.<sup>9</sup> To verify such information, the provider must access a database established by OFR<sup>10</sup> and must submit the following data on each transaction:

- Drawer's name, address, and drivers' license number;
- Drawer's social security or employment authorization alien registration number;
- Drawer's date of birth;
- Amount and date of the transaction;
- Date the transaction is closed; and
- Check number.<sup>11</sup>

Current law provides a public records exemption for identifying information contained in the database. A deferred presentment provider may access such information in order to verify whether any

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<sup>1</sup> Part IV of chapter 560, F.S.

<sup>2</sup> Deferred presentment providers are more commonly known as "pay-day lenders." Deferred presentment providers are businesses that charge a fee for cashing a customer's check and agreeing to hold that check for a certain number of days prior to depositing or redeeming the check. Section 560.402(6), F.S.

<sup>3</sup> Section 560.403, F.S.

<sup>4</sup> Section 560.404(5), F.S.

<sup>5</sup> Section 560.404(6), F.S. The maximum \$5.00 verification fee is established by Rule 69V-560.801, Fla. Admin. Code, as authorized by s. 560.309(4), F.S.

<sup>6</sup> A drawer is a person who writes a personal check and upon whose account the check is drawn. Section 560.402(7), F.S.

<sup>7</sup> Section 560.404(8), F.S.

<sup>8</sup> Section 560.404(18), F.S.

<sup>9</sup> Section 560.404(19), F.S.

<sup>10</sup> OFR is required to establish this database of all deferred presentment transactions in the state and give providers real-time access through an Internet connection. OFR contracts with a private vendor, Veritec Solutions, Inc., to maintain the database. Senate Staff Analysis and Economic Impact Statement for S 7072, prepared by Banking and Insurance Committee, January 26, 2006, at 4.

<sup>11</sup> Section 560.404(23), F.S. All of the information is required by statute, except the drawer's date of birth and check number.

Telephone conversation with staff of OFR, January 27, 2006.

transactions are outstanding for a particular person. Pursuant to the Open Government Sunset Review Act,<sup>12</sup> the exemption will repeal on October 2, 2006, unless reenacted by the Legislature.<sup>13</sup>

### **Effect of Bill**

The bill removes the repeal date, thereby reenacting the public records exemption. It clarifies that the public records exemption applies to information that identifies a drawer or a deferred presentment provider. The bill also makes editorial changes.

#### **C. SECTION DIRECTORY:**

Section 1 amends s. 560.4041, F.S., to remove the October 2, 2006, repeal date.

Section 2 provides an October 1, 2006, effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

This bill does not create, modify, amend, or eliminate a state revenue source.

##### **2. Expenditures:**

The bill may represent a minimal non-recurring positive impact on state expenditures. A bill enacting or amending a public records exemption causes a non-recurring negative fiscal impact in the year of enactment because of training employees responsible for replying to public records requests. In the case of bills reviewed under the Open Government Sunset Review process, training costs are incurred if the bill does not pass or if the exemption is amended, as retraining is required. Because the bill eliminates the repeal of the exemption, state government may recognize a minimal nonrecurring decrease in expenditures because employee-training activities are avoided.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

This bill does not create, modify, amend, or eliminate a local revenue source.

##### **2. Expenditures:**

This bill does not create, modify, amend, or eliminate local expenditures.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

#### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

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<sup>12</sup> Section 119.15, F.S.

<sup>13</sup> Section 560.4041, F.S.

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Open Government Sunset Review Act**

The Open Government Sunset Review Act sets forth a legislative review process for newly created or substantially amended public records or public meetings exemptions. It requires an automatic repeal of the exemption on October 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.

The Act provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required because of the requirements of Art. 1, s. 24(c), Florida Constitution. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created (e.g., allowing another agency access to the confidential or exempt records), then a public necessity statement and a two-thirds vote for passage are not required.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES**

None.



HB 7061

2006

A bill to be entitled  
 An act relating to a review under the Open Government  
 Sunset Review Act regarding deferred presentment  
 providers; amending s. 560.4041, F.S., which provides an  
 exemption from public records requirements for information  
 that identifies a drawer or a deferred presentment  
 provider contained in the database for deferred  
 presentment providers maintained by the Office of  
 Financial Regulation of the Financial Services Commission;  
 making clarifying and editorial changes; removing  
 superfluous language; removing the scheduled repeal of the  
 exemption; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 560.4041, Florida Statutes, is amended  
 to read:

560.4041 Database for deferred presentment providers;  
 public records exemption.--~~The identifying Information that~~  
identifies a drawer or a deferred presentment provider contained  
 in the database ~~for deferred presentment providers, which is~~  
 authorized under s. 560.404~~7~~, is confidential and exempt from s.  
 119.07(1)~~7~~ and s. 24(a), Art. I of the State Constitution. A  
deferred presentment provider may access information that it has  
entered into the database and may obtain an eligibility  
determination for a particular drawer based on information in  
the database. ~~7 except that the identifying information in the~~  
~~database may be accessed by deferred presentment providers to~~

HB 7061

2006

~~verify whether any deferred presentment transactions are  
outstanding for a particular person and by the office for the  
purpose of maintaining the database. This section is subject to  
the Open Government Sunset Review Act of 1995 in accordance with  
s. 119.15, and shall stand repealed October 2, 2006, unless  
reviewed and saved from repeal through reenactment by the  
Legislature.~~

Section 2. This act shall take effect October 1, 2006.